Hearing Date: August 28, 2013 at 10:00 a.m. (ET)
Objection Deadline: August 9, 2013 at 4:00 p.m. (ET)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	)	Chapter 11
Debtors.	)	Jointly Administered

NOTICE OF DEBTORS' OBJECTION TO PROOFS OF CLAIM FILED BY CERTAIN PLAINTIFFS IN CALIFORNIA LITIGATION

PLEASE TAKE NOTICE that the undersigned have filed the attached *Objection to Proofs of Claim Filed by Certain Plaintiffs in California Litigation* (the "Objection").

PLEASE TAKE FURTHER NOTICE that a hearing on the Objection will take place on **August 28, 2013 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable Martin Glenn, at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, Room 501.

PLEASE TAKE FURTHER NOTICE that responses, if any, to the Objection must be made in writing, conform to the Federal Rules of Bankruptcy Procedure, the

Local Bankruptcy Rules for the Southern District of New York, and the Notice, Case Management, and Administrative Procedures approved by the Bankruptcy Court [Docket No. 141], be filed electronically by registered users of the Bankruptcy Court's electronic case filing system, and be served, so as to be received no later than **August 9, 2013 at 4:00 p.m. (Prevailing Eastern Time)**, upon (a) counsel to the Debtors, Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, NY 10104 (Attention: Gary S. Lee, Norman S. Rosenbaum and Jordan A. Wishnew); (b) litigation counsel to the Debtors, Locke Lord LLP, 44 Montgomery Street, Suite 2400, San Francisco, CA 94104 (Attention: Regina J. McClendon); (c) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, NY 10004 (Attention: Tracy Hope Davis, Linda A. Riffkin, and Brian S. Masumoto); (d) the Office of the United States Attorney General, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530-0001 (Attention: US Attorney General, Eric H. Holder, Jr.); (e) Office of the New York State Attorney General, The Capitol, Albany, NY 12224-0341 (Attention: Nancy Lord, Esq. and Enid N. Stuart, Esq.); (f) Office of the U.S. Attorney for the Southern District of New York, One St. Andrews Plaza, New York, NY 10007 (Attention: Joseph N. Cordaro, Esq.); (g) counsel for Ally Financial Inc., Kirkland & Ellis LLP, 153 East 53rd Street, New York, NY 10022 (Attention: Richard M. Cieri and Ray Schrock); (h) counsel for the committee of unsecured creditors, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036 (Attention: Kenneth Eckstein and Douglas Mannal); (i) counsel for Ocwen Loan Servicing, LLC, Clifford Chance US LLP, 31 West 52nd Street, New York, NY 10019 (Attention: Jennifer C. DeMarco and Adam Lesman); (j) counsel for Berkshire Hathaway

Inc., Munger, Tolles & Olson LLP, 355 South Grand Avenue, Los Angeles, CA 90071 (Attention: Thomas Walper and Seth Goldman); (k) Internal Revenue Service, P.O. Box 7346, Philadelphia, PA 19101-7346 (if by overnight mail, to 2970 Market Street, Mail Stop 5-Q30.133, Philadelphia, PA 19104-5016); and (l) Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, Suite 400, New York, NY 10281-1022 (Attention: George S. Canellos, Regional Director).

PLEASE TAKE FURTHER NOTICE that if you do not timely file and serve a written response to the relief requested in the Objection, the Bankruptcy Court may deem any opposition waived, treat the Objection as conceded, and enter an order granting the relief requested in the Objection without further notice or hearing.

Dated: July 10, 2013

/s/ Norman S. Rosenbaum

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Case No. 12-12020 (MG)
	)	
RESIDENTIAL CAPITAL, LLC, et al.,	)	Chapter 11
	)	
Debtors.	)	Jointly Administered

DEBTORS' OBJECTION TO PROOFS OF CLAIM FILED
BY CERTAIN PLAINTIFFS IN CALIFORNIA LITIGATION

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**TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE:**

Residential Capital, LLC and its affiliated debtors in the above-captioned chapter 11 cases (the "Chapter 11 Cases"),[1] as debtors and debtors in possession (collectively, the "Debtors")[2] hereby file this objection (the "Objection"), seeking to disallow and expunge certain proofs of claim listed on Schedule A hereto (individually, a "California Litigation Claim" and collectively, the "California Litigation Claims") filed by sixty-one individuals (each a "California Litigation Claimant," and collectively the "California Litigation Claimants")[3] pursuant to section 502(b) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 3007(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") on the grounds that they fail to state a claim against the Debtors.[4] The Debtors seek entry of an order, substantially in the form attached hereto as Exhibit 1 (the "Proposed Order"), granting the requested relief.[5] In support of the Objection, the Debtors respectfully represent as follows:

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1 Creditors and parties-in-interest with questions or concerns regarding the Debtors' Chapter 11 Cases or the relief requested in this Objection may refer to http://www.kccllc.net/rescap for additional information.

2 The names of the Debtors in these cases and their respective tax identification numbers are identified on Exhibit 1 to the Affidavit of James Whitlinger, Chief Financial Officer of Residential Capital, LLC, in Support of Chapter 11 Petitions and First Day Pleadings [Docket No. 6].

3 The California Litigation Claimants include: Carolyn Hairston, Christine Petersen, William Mimiaga, Robin Gaston, Patrick Gaston, Mary Serrano, Sarah Sebagh, Rick Albritton, Veronica Grey, Brenda Mella, Joselito Mella, Michael Man, Judy Lim, David Cruz, Yesenia Cruz, Gregory Buck, Christina Palbicke, Khalil Subat, Manija Subat, Genevie Cabang, Julio Gonzalez, Lisa Simonyi, Rick Ewald, Regina Faison, Alex Ibarra, Maria Elena Del Cid, Julo Del Cid, Mesbel Mohamoud, Michael Moultrie, Willie Gilmore, Phyllis McCrea, Cecilia Chaube, Magdalena Avila, Gricelda Ruano, Lois Elisa Jordan, Terrell Sullivan, Gloria Portillo, Florastene Holden, Marco Badilla, Manuela Badilla, Ignacio Rodriguez, Rosa Rodriguez, Salvador Barajas, Maria Barajas, Brian Foote, Olan Ross, Evelyn Ross, Gary Johnson, Joellyn Johnson, Rodelina Santos, Jun O. Santos, Michael Brown, Claudinette Brown, Martin Kassowitz, Shirley Kaplan, Henry Completo, Irma Laredo, Marcia Willoughby and Victor Pazos.

4 The Debtors reserve all of their rights to object on any other basis to any California Litigation Claim not set forth in this Objection, and the Debtors reserve all of their rights to amend this Objection should any further bases come to light.

5 A combined motion addressing all of the California Litigation Claims is appropriate since they all say exactly the same thing and suffer from the same failings.

JURISDICTION, VENUE AND STATUTORY PREDICATE

1. This Court has jurisdiction over this Objection under 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicate for the relief requested herein is Bankruptcy Code section 502(b) and Bankruptcy Rule 3007(a).

PRELIMINARY STATEMENT[6]

3. Each of sixty-one individual California Litigation Claimants, through purported counsel Brookstone Law, P.C. ("Purported Counsel"), filed against the Debtors' estates a California Litigation Claim asserting nine identical claims, each in the amount of $1.3 million. Together, they total $713.7 million. Each of these claims should be disallowed and expunged pursuant to Bankruptcy Code section 502(b) on, among others, the ground that they fail to state a single, colorable claim against any of the Debtors under applicable law.

4. In the weeks before the Petition Date, the California Litigation Claimants filed a rambling and incoherent initial complaint (the "Initial Complaint") against a multitude of Debtor and non-debtor defendants, which sought monetary damages because a group of California homeowners believe they were allegedly harmed by the defendants' home lending practices in California between 2003 and 2008 when the individuals obtained loans from one or more of the named defendants. Certain non-debtor defendants sought, and were granted, dismissal of the Initial Complaint in its entirety because the Initial Complaint lacked the specificity necessary to satisfy basic pleading standards.

[6] Capitalized terms used in this Preliminary Statement shall have the meanings ascribed to such terms below.

5. After the Petition Date, the California Litigation Claimants filed an Amended Complaint against the same defendants (including Debtor entities), which largely repeated the same allegations made in the Initial Complaint. The Amended Complaint serves as the basis for the California Litigation Claims.

6. Now, after two complaints, two motions to dismiss, and entry of an order dismissing the Initial Complaint, the California Litigation Claimants seek to assert the California Litigation Claims in these Chapter 11 Cases. Notwithstanding their voluntary dismissal of the Amended Complaint earlier this year, the California Litigation Claimants continue to prosecute the California Litigation Claims against the Debtors, apparently hoping that they will achieve a better outcome in this Court. However, as discussed herein, the California Litigation Claims are no different from the previously dismissed claims alleged against the non-debtor defendants, and therefore, should be summarily disposed of in a similar manner. Simply because the California Litigation Claimants seek to litigate their claims in the Bankruptcy Court does not ease their evidentiary and pleading burdens. For a proof of claim to be allowed, the allegations in such claim must meet the pleadings requirements of the Federal Rules of Civil Procedure (the "Rules"). Therefore, each of the California Litigation Claims should be disallowed and expunged from the Debtors' claims register in their entirety because the California Litigation Claims are predicated on a factually deficient complaint in which the allegations are devoid of specificity and fail to state a single valid colorable claim against any of the Debtors.

BACKGROUND

7. On May 14, 2012, each of the Debtors filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors are managing and operating their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a)

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and 1108. These Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).

8. On May 16, 2012, the United States Trustee for the Southern District of New York appointed a nine member official committee of unsecured creditors [Docket No. 102].

9. On June 20, 2012, the Court directed that an examiner be appointed, and on July 3, 2012, the Court approved Arthur J. Gonzalez as the examiner (the "Examiner") [Docket Nos. 454, 674]. On May 13, 2013, the Examiner filed his report under seal and, on June 26, 2013, the Court entered an order unsealing the report [Docket Nos. 3698, 4099].

10. On July 17, 2012, the Court entered an order [Docket No. 798] appointing Kurtzman Carson Consultants LLC ("KCC") as the notice and claims agent in these Chapter 11 Cases. Among other things, KCC is authorized to (a) receive, maintain, and record and otherwise administer the proofs of claim filed in these Chapter 11 cases and (b) maintain official claims registers for each of the Debtors.

11. On August 29, 2012, this Court entered an order approving the Debtors' motion to establish procedures for filing proofs of claim in the Chapter 11 Cases [Docket No. 1309] (the "Bar Date Order").[7]

A. The California Litigation

12. The sixty-one California Litigation Claimants filed the Initial Complaint and the Amended Complaint (as defined below) against multiple defendants, including various

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[7] The Bar Date Order established, among other things, (i) November 9, 2012 at 5:00 p.m. (Prevailing Eastern Time) as the deadline to file proofs of claim by virtually all creditors against the Debtors (the "General Bar Date") and prescribing the form and manner for filing proofs of claim; and (ii) November 30, 2012 at 5:00 p.m. (Prevailing Eastern Time) as the deadline for governmental units to file proofs of claim (the "Governmental Bar Date"). (Bar Date Order ¶¶ 2, 3). On November 7, 2012, the Court entered an order extending the General Bar Date to November 16, 2012 at 5:00 p.m. (Prevailing Eastern Time) [Docket No. 2093]. The Governmental Bar Date was **not** extended. To date, approximately 6,860 proofs of claim have been filed in these Chapter 11 Cases as reflected on the Debtors' claims registers.

non-debtor and Debtor-entities, in the United States District Court, Central District of California – Western Division (the "District Court"), Case No.: 12-5016-JAK (AGRx) (the "California Litigation").

13. On May 9, 2012, the California Litigation Claimants filed the Initial Complaint asserting a number of causes of action against numerous defendants, including the "ResCap defendants": (1) Residential Capital, LLC, (2) GMAC-RFC Holding Company, LLC, (3) Residential Funding Corporation, (4) Homecomings Financial, LLC, (5) Executive Trustee Services, LLC, and (6) Home Connects Lending Services, LLC (collectively, the "ResCap Defendants"), arising from loans alleged to have been obtained by each Plaintiff during the years 2003-2008. The Initial Complaint was also filed against GMAC Mortgage Group, Inc. n/k/a GMAC Mortgage Group LLC, a non-debtor entity.

14. The Initial Complaint asserted eight causes of action against the defendants, including (i) Fraudulent Concealment (First); (ii) Intentional Misrepresentation (Second); (iii) Negligent Misrepresentation (Third); (iv) Cal. Bus. & Prof. Code § 17200 (Fourth); (v) Wrongful Foreclosure (Fifth); (vi) Truth in Lending Act, 15 U.S.C. § 1601 et seq. (Sixth); (vii) Violation of Appraisal Independence in violation of Dodd-Frank, 12 U.S.C. § 1640 et seq. (Seventh); and (viii) Violation of Appraiser Independence in violation of 12 C.F.R. § 225.65 and 12 C.F.R. § 323.5 (Eighth).

15. On June 12, 2012, the ResCap Defendants, through their counsel, filed the "Notice of Bankruptcy and Effect of Automatic Stay" (the "Notice of Stay"). The Notice of Stay provides that "[a]ny action taken by the [California Litigation Claimants] against the Debtors without obtaining relief from the automatic stay from the Bankruptcy Court may be void *ab*

initio and may result in finding of contempt against [California Litigation Claimants] by the Bankruptcy Court."

16. On June 28, 2012, Ally Bank (on its own behalf and on behalf of the entity incorrectly named as "GMAC, A National Banking Association"), Ally Financial Inc., and GMAC Mortgage Group LLC (the "Non-Debtor Defendants") filed a Motion to Dismiss (the "Motion to Dismiss"), which sought dismissal of the Initial Complaint on the grounds that, among other things, it failed to satisfy elementary federal pleading standards and did not present concrete facts that entitled the California Litigation Claimants to relief. The Motion to Dismiss also asserted that the Initial Complaint's fraud-based allegations failed to satisfy Rule 9(b) 's heightened standard of particularity and, alternatively, failed to state a claim for any of the causes of action contained in the Initial Complaint.

17. On September 24, 2012, the Honorable John A. Kronstadt, United States District Judge, issued an order granting the Motion to Dismiss (the "Order"), without prejudice as to the following causes of action: (i) Fraudulent Concealment (First); (ii) Intentional Misrepresentation (Second); (iii) Negligent Misrepresentation (Third); (iv) Unfair Competition pursuant to Cal. Bus. & Prof. Code § 17200 (Fourth); (v) Wrongful Foreclosure (Fifth); and (vi) Truth in Lending Act, 15 U.S.C. § 1601 et seq. (Sixth). The District Court also granted the Motion to Dismiss, with prejudice, as to claims arising from Violation of Appraisal Independence in violation of Dodd-Frank, 12 U.S.C. § 1640 et seq. and Violation of Appraiser Independence in violation of 12 C.F.R. § 225.65 and 12 C.F.R. § 323.5. A copy of the Order is attached hereto as Exhibit 2.

18. On October 31, 2012, the California Litigation Claimants filed the "First Amended Complaint" asserting six causes of action: (i) Fraudulent Concealment [Violation of

Civ. Code §§ 1572, 1709 and 1710]; (ii) Intentional Misrepresentation [Violation of Civ. Code §§ 1572, 1709 and 1710]; (iii) Negligent Misrepresentation [Violation of Civ. Code §§ 1572, 1709 and 1710]; (iv) Unfair Competition [Violation of Bus. & Prof. Code § 17200 et seq.]; (v) Wrongful Foreclosure [Violation of Civ. Code § 2924]; and (vi) Improper Influence Over Appraiser [Violation of Cal. Civ. Code § 1090.5] (the "Amended Complaint").[8] The Amended Complaint attaches a voluminous "Appendix A" that purportedly attempts to cure the deficiencies in the Initial Complaint, which were noted in the Order. The Amended Complaint also names the ResCap Defendants as among the defendants.[9]

19. On November 19, 2012, the Non-Debtor Defendants filed a "Notice of Motion and Motion to Dismiss First Amended Complaint" seeking dismissal of the Amended Complaint in its entirety, largely on the grounds they had employed in their successful motion to dismiss the Complaint.

20. On January 31, 2013, the California Litigation Claimants filed the "Notice of Dismissal Pursuant to Federal Rules of Civil Procedure 41(a) or (c)" (the "Notice of Dismissal") dismissing the Amended Complaint in its entirety as against both the Debtor Defendants and the Non-Debtor Defendants. The Notice of Dismissal is attached hereto as Exhibit 3.

[8] A copy of the Amended Complaint is attached hereto as Exhibit 4. Due to the voluminous nature of the appendix to the Amended Complaint, it has not been included in Exhibit 4. The Debtors have provided the Court with a copy of the Amended Complaint (including the Appendix A), and will provide to parties-in-interest electronic or hard copies of the complete Amended Complaint upon request. The factual allegations made by the California Litigation Claimants set forth therein are fully incorporated herein by reference. To avoid duplication, a complete recitation of purported facts contained in the Amended Complaint will not be provided in this Objection.

[9] The filing of the Amended Complaint clearly was a violation of the automatic stay in these Chapter 11 Cases. However, as noted below, having suffered reverses, the California Litigation Claimants subsequently dismissed the Amended Complaint without prejudice.

B. The California Litigation Claims

21. On November 9, 2012, the California Litigation Claimants filed nearly identical proofs of claims against certain Debtor entities, including, (1) GMAC Mortgage, LLC, (2) GMAC-RFC Holding Residential Funding Company, LLC, (3) Home Connects Lending Services, LLC, (4) Homecomings Financial, LLC, (5) Executive Trustee Services, LLC, (6) Residential Funding Company, LLC, (7) Residential Capital, LLC, (8) Residential Funding Real Estate Holdings, LLC, and (9) Residential Mortgage Real Estate Holdings, LLC.[10] Each California Litigation Claimant asserted an unsecured claim in the amount of $1,300,000 for "Contingent Fraud Claim in litigation." An example of one of the California Litigation Claims is attached hereto as Exhibit 5. At the time the California Litigation Claims were filed, the ResCap Defendants had not responded to the Amended Complaint. The California Litigation Claims both refer to the Amended Complaint and identify the same six causes of action asserted therein.

22. As justification for the California Litigation Claims, the California Litigation Claimants generally assert that the ResCap Defendants "set out upon a massive and centrally-directed fraud by which Defendants purportedly (1) placed [the applicable California Litigation Claimant] into loans which Defendants *knew* [the California Litigation Claimant] could not afford and would default upon to a mathematical certainty, (2) abandoned industry-standard underwriting guidelines, (3) concealed/mispresented the terms of their loans to [California Litigation Claimants] to induce unwitting consent, and (4) intentionally inflated the appraisal values of homes throughout California in a market-fixing scheme –*knowing that their scheme would cause the precipitous decline in values of all homes throughout California*,

[10] The California Litigation Claimants filed claims against two Debtor-entities not listed in the caption to the Amended Complaint, Residential Funding Real Estate Holdings, LLC and Residential Mortgage Real Estate Holdings, LLC.

including those of [the California Litigation Claimants]." (Ex. 4, at 2). On these grounds, each of the California Litigation Claimants seeks monetary damages of approximately $1.3 million against each of the Debtor-entities, but fail to: (1) adequately allege any wrongdoing by a specific Debtor entity; and (2) provide any objective basis to substantiate such purported damages.

RELIEF REQUESTED

23. The Debtors file this Objection pursuant to Bankruptcy Code section 502(b), seeking to disallow and expunge the California Litigation Claims from the Debtors' claims register in their entirety.

OBJECTION

24. A filed proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). A properly completed proof of claim is *prima facie* evidence of validity and amount of a claim. See FED. R. BANKR. P. 3001(f). A party in interest may object to a proof of claim, and once an objection is made, the court must determine whether the objection is well founded. See 4 COLLIER ON BANKRUPTCY ¶ 502.02[2] (16th ed. rev. 2012).

25. Bankruptcy Code section 502(b)(1) provides, in relevant part, that a claim may not be allowed to the extent that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law." 11 U.S.C. § 502(b)(1). Whether a claim is allowable "generally is determined by applicable nonbankruptcy law. . . ." In re W.R. Grace & Co., 346 B.R. 672, 673 (Bankr. D. Del. 2006). "What claims of creditors are valid and subsisting obligations against the bankrupt at the time a petition is filed, is a question which, in the absence of overruling federal law, is to be determined by reference to state law." In re Hess, 404 B.R. 747, 749 (Bankr. S.D.N.Y. 2009) (quoting Vanston Bondholders Protective Comm. v.

Green, 329 U.S. 156, 161 (1946)). For the reasons set forth below, the California Litigation Claims fail to state a claim against any of the Debtors under the applicable law and should be disallowed and expunged in their entirety.

I. THE AMENDED COMPLAINT FAILS TO SATISFY BASIC PLEADING STANDARDS

26. Several courts, including those in this district, have applied the federal pleadings standards when assessing the validity of a proof of claim. See In re DJK Residential LLC, 416 B.R. 100, 106 (Bankr. S.D.N.Y. 2009) ("In determining whether a party has met their burden in connection with a proof of claim, bankruptcy courts have looked to the pleading requirements set forth in the Federal Rules of Civil Procedure.") (citing In re Rockefeller Ctr. Props., 272 B.R. 529, 542, n.17 (Bankr. S.D.N.Y. 2000), aff'd sub nom., NBC v. Rockefeller Ctr. Props. (In re Rockefeller Ctr. Props.), 226 B.R. 52 (S.D.N.Y. 2001), aff'd, 46 Fed. App'x 40 (2d Cir. 2002); Flake v. Alper Holdings USA, Inc. (In re Alper Holdings USA, Inc.), 398 B.R. 736, 748 (Bankr. S.D.N.Y. 2008) ("The documents attached to the proofs of claim should be treated, for purposes of a motion to disallow claims, like documents that are attached to or relied upon in a complaint are treated on a Rule 12(b)(6) motion to dismiss. . . ") (citation omitted); In re Nortel Networks, Inc., 469 B.R. 478, 479 (Bankr. D. Del. 2012) (applying the standards of Rule 9(b) to a review of amended claims that asserted claims for, *inter alia*, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, civil conspiracy, unjust enrichment, and subrogation). Indeed, since a claim objection is a contested matter under Fed. R. Bankr. P. 9014(a), Rule 9(b) applies per Fed. R. Bankr. P. 9014(c).

27. The Debtors seek to expunge in their entirety the California Litigation Claims. However, because the California Litigation Claims incorporate by reference the Amended Complaint and do not add any additional substantive bases in support of the Claims,

this Objection addresses the merits of each count of the Amended Complaint in detail below. Accordingly, the validity of the California Litigation Claims, which are based wholly on the assertions made in the Amended Complaint, should be adjudged under the pleading standards applicable to the Amended Complaint.

A. The Amended Complaint Fails to Satisfy Rule 8(a)

28. Pursuant to Federal Rule of Civil Procedure 8(a)(2), a "pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief."). Fed. R. Civ. P. 8(a)(2). Rule 8(a) "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Ascroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation omitted). It is insufficient for a complaint to simply "le[ave] open the possibility that a plaintiff might later establish some 'set of undisclosed facts' to support recovery." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 561 (2007). Rather, it must plead sufficient facts "to provide the 'grounds' of his 'entitle[ment] to relief,' [which] requires more than labels and conclusions, and [for which] a formulaic recitation of the elements of a cause of action will not do." Id. at 555 (citation omitted). The purpose of Rule 8(a)(2) is to ensure that the complaint "give[s] enough detail to illuminate the nature of the claims *and allow defendants to respond*." Regis Techs., Inc. v. Oien (In re Oien), 404 B.R. 311, 317 (Bankr. N.D. Ill. 2009 (emphasis added) (citations and internal quotation marks omitted). In other words each defendant must know what he is charged with. See, e.g., Jones v. Pollard-Buckinham, 348 F.3d 1072, 1073 (8th Cir. 2003) (though inartful, *pro se* complaint satisfied Rule 8(a)(2) because "it clearly identified how each defendant was involved in the conduct of which . . . [the plaintiff] complains."); Forman v. Salazano (In re Norvergence, Inc.), 405 B.R. 709, 736-37 (Bankr. D.N.J. 2009) (complaint's setoff allegations inadequate because, among other things, it did not

identify specific defendants with specific transactions). The Amended Complaint fails to meet this standard in a variety of ways.

29. As an initial matter, the Amended Complaint fails to specify what actions each individual defendant took or details of the omissions and/or misrepresentations each individual defendant made that would give rise to the claims asserted in the Amended Complaint (and, by reference to the Amended Complaint in the proofs of claim, the California Litigation Claims).

30. In addition, the Amended Complaint fails to allege the specific corporate entity that originated many of the California Litigation Claimants' loans (collectively, the "Loans" and each a "Loan"). Instead, the Amended Complaint only asserts that either "GMAC" (an undefined entity) or "GMAC and Defendants" originated each Loan. (See Amended Complaint, Appendix A at "Table 1"). Moreover, the Amended Complaint inconsistently identifies several other parties—including Paul Financial, LLC, Nationwide Lending Corp., Green Point Mortg. Fund, Inc., and SCME—as "Loan Originators." (See Appendix A ¶¶ 1-2). As a result, the Amended Complaint fails to put the defendants on notice of any specific claim against them. In that regard, the Amended Complaint violates the basic principle of Rule 8(a)(2), inasmuch as the Amended Complaint does not set forth "a *short and plain* statement of the claim[s] . . . ," (emphasis added). In fact, the Amended Complaint requires that the ResCap Defendants piece together information about each of them by oscillating back and forth between its 111 pages and 349 paragraphs, and the Appendix A.

31. The Amended Complaint also fails to indicate with whom each California Litigation Claimant communicated when the Loans were originated. Specially, the Amended Complaint does not reference what the California Litigation Claimants were told about their

respective Loan or what information pertaining to the terms and conditions of the Loan the California Litigation Claimants relied upon for their respective Loan. Though the Appendix A attached to the Amended Complaint purports to provide "Individualized Plaintiff Allegations," it merely provides vague allegations that each California Litigation Claimant spoke with a "Loan Consultant" and that various "Defendants and Loan Consultants" committed certain acts and omissions that caused the California Litigation Claimants harm. (See Appendix A ¶¶ 1-42).

32. Moreover, the Amended Complaint fails to allege the corporate entity that serviced the Loans beyond referencing "GMAC"—a fact that should clearly be within the knowledge of each California Litigation Claimant. (See, e.g., Amended Complaint, ¶¶ 11-22 (defining various defendants but not identifying any as "GMAC"); id. ¶ 48 (using undefined term "GMAC" for first time, in allegations relating to "GMAC and its co-conspirators . . . Defendants herein"); Amended Complaint, Appendix A at 1 (using term "GMAC" and stating "the loan was originated by "GMAC and defendants" and "GMAC is currently servicing the loan").)

33. In sum, the Amended Complaint is a long-winded recitation of purported "facts" that are devoid of any factual allegations against any specific defendant. Despite being given an opportunity to remedy earlier deficiencies, there remains a fatal absence of specific facts about any of the defendants, and the California Litigation Claimants fail to substantiate the broad allegations made in the Amended Complaint or any claims against the ResCap Defendants through the California Litigation Claims. In short, the Amended Complaint fails to provide the ResCap Defendants with adequate notice about the alleged claims being asserted against them.

34. Based upon the fact that the California Litigation Claims are predicated on allegations that fail to comply with Rule 8(a)(2)'s basic pleading standards, the California Litigation Claims should be disallowed and expunged in their entirety for that reason alone.

B. The Amended Complaint's Fraud-Based Claims Fail to Satisfy Rule 9(b)

35. The Amended Complaint similarly fails to meet the heightened standard of particularity that Rule 9(b) imposes on fraud-based claims. Pursuant to Rule 9(b), "a party must state with particularity the circumstances constituting fraud or mistake" if making allegations of fraud. Fed. R. Civ. P. 9(b).

36. "Rule 9(b) demands that, [when averments of fraud are made,] the circumstances constituting the alleged fraud 'be specific enough to give defendants notice of the particular misconduct . . . so that they can defend against the charge and not just deny that they have done anything wrong." Kearns v. Ford Motor Co., 567 F.3d 1120, 1124 (9th Cir. 2009) (citations and quotations and citation omitted).[11] Further, Rule 9(b) "does not allow a complaint to merely lump multiple defendants together but require[s] plaintiffs to differentiate their allegations when suing more than one defendant . . . and inform each defendant separately of the allegations surrounding his alleged participation in the fraud." Swartz v. KPMG, LLP, 476 F.3d 756, 764-65 (9th Cir. 2007) (quotations omitted); see also Gowan v. Patriot Group, LLC (In re Dreier LLP), 452 B.R. 391, 408 (Bankr. S.D.N.Y. 2011); In re Norvergence, 405 B.R. at 726-27. If the claim "sounds in fraud," plaintiffs must plead the whole claim with particularity against each defendant. Kearns, 567 F.3d at 1125-28; Gowan v. Amaranth (In re Dreier LLP), 452 B.R. 451, 462 (Bankr. S.D.N.Y. 2011).

[11] With respect to the choice-of-law rules applicable to the determination of "conduct-relating" rules of law, courts look to the place of the tort. See In re Lois/USA, Inc., 264 B.R. 69, 108 (Bankr. S.D.N.Y. 2001). "For actions sounding in fraud, the substantive law of the state in which the injury was suffered—rather that the state where the fraudulent conduct was initiated—usually governs." Id. (quoting Sack v. V.T. Low, 478 F.2d 360, 365 (2d Cir.1973) ("[W]hen a person sustains loss by fraud, the place of wrong is where the loss is sustained, not where fraudulent representations are made.")). Based on these "choice of law" principles, the appropriate law to apply to assess the validity of the California Litigation Claims is California law.

37. Each of the first four claims in the Amended Complaint, and the first four claims listed on the "Summary of Basis for Creditor's Claim" attached to each of the California Litigation Claims, are asserted fraud claims and are, therefore, subject to Rule 9(b). (See Amended Complaint ¶¶ 186-219 (Fraudulent Concealment); ¶¶ 221-271 (Intentional Misrepresentation); ¶¶ 272-282 (Negligent Misrepresentation)[12], ¶¶ 283-325 (Unfair Competition); see also "Summary of Basis For Creditor's Claim" attached to California Litigation Claims at ¶ 2).

38. The allegations in the Amended Complaint fail to meet Rule 9(b)'s heightened pleading standard with respect to the first four causes of action. The Amended Complaint fails to allege any specific misrepresentation, nondisclosure, or concealment by any specific defendant, let alone the ResCap Defendants. Further, the California Litigation Claimants have not identified the particular facts specific to each defendant (including the ResCap Defendants) and how that defendant's acts harmed each plaintiff. The general allegations made by the California Litigation Claimants, without distinguishing one defendant from another or alleging specific facts about each defendant's involvement in the loan process or the alleged fraud, are insufficient to sustain the causes of action—and the claims asserted by the California Litigation Claimants against the Debtors—under Rule 9(b).

39. Accordingly, the first through fourth counts in the Amended Complaint should be disallowed because they do not state a claim in accordance with Rule 9(b). Fed. R. Bankr. P. 9014(c) (rendering Rule 9(b) applicable in contested matters); see also In re Nortel Networks, Inc., 469 B.R. at 479 (applying the standards of Rule 9(b) to a review of claims).

[12] Claims for negligent misrepresentation must meet Rule 9(b)'s particularity requirements. See Decker v. GlenFed, Inc. (In re GlenFed, Inc. Secs. Lit.), 42 F.3d 1541, 1547-48 (9th Cir. 1994).

II. THE AMENDED COMPLAINT FAILS TO PLEAD A BASIS FOR DERIVATIVE LIABILITY

A. The Amended Complaint Alleges No Basis for Agency or Conspiracy Liability

40. The California Litigation Claimants' unsubstantiated attempt to paint the defendants (including the ResCap Defendants) as "co-conspirators" who, "through a common plan and scheme," "ratified" one another's conduct, or "collaborated" to entice plaintiffs into "dangerous loans," fails to plead a basis for derivative liability. (See, e.g., Amended Complaint ¶¶ 23-25, 32-33).

41. The bare allegations of conspiracy in the Amended Complaint and allegations that lenders were "correspondents" who were "authorized" to lend on behalf of "Defendants," are insufficient to satisfy either Rule 8(a)'s pleading standards or the more stringent requirements of Rule 9(b). See Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003) (dismissing claims where plaintiff failed to "provide the particulars of when, where, or how the alleged conspiracy occurred."); Twombly, 550 U.S. at 556-57 ("[A]n allegation of parallel conduct and a bare assertion of conspiracy will not suffice. Without more, parallel conduct does not suggest conspiracy, and a conclusory allegation of agreement at some unidentified point does not supply facts adequate to show illegality."); see, e.g., N.L.R.B. v. Semco Printing Ctr., Inc., 721 F.2d 886, 891 (2d Cir. 1983) (A "bare assertion" of authorization "hardly makes out a prima facie case of agency. . . .").

B. The Intracorporate Immunity Doctrine Bars the California Litigation Claimants' "Conspiracy"-Based Claims

42. California Litigation Claimants' "conspiracy"-based claims are also barred by application of the "intracorporate immunity doctrine." This doctrine provides "that the officers, agents and employees of a single corporate or municipal entity, each acting within the

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scope of his or her employment, legally are incapable of conspiring together." See Cameron v. Church, 253 F. Supp. 2d 611, 623 (S.D.N.Y. 2003). Because the defendants were sued as affiliated parent/subsidiary entities and alleged "agents" of one another, see Amended Complaint ¶¶ 21, 25, the intracorporate immunity doctrine applies to plaintiffs' conspiracy-based claims.

III. THE PLAINTIFFS FAIL TO STATE ANY FRAUD-BASED CLAIM

A. California Litigation Claimants Fail to Allege Facts Giving Rise to a Duty to Disclose

43. The first four of the California Litigation Claimants' causes of action (fraudulent concealment, intentional misrepresentation, negligent misrepresentation, and unfair competition) appear to be based upon the allegation that the defendants failed to disclose *to the California Litigation Claimants* the facts about *the California Litigation Claimants' own* credit worthiness and ability to repay the Loans, and about the value of their homes. (See Amended Complaint ¶¶ 179-185, 186-325).[13]

44. Contrary to the California Litigation Claimants' unfounded assertions, in California, "[t]he general rule for liability for nondisclosure is that even if material facts are known to one party and not the other, failure to disclose those facts is not actionable fraud unless there is some fiduciary or confidential relationship giving rise to a duty to disclose." Kovich v. Paseo Del Mar Homeowners' Ass'n, 41 Cal. App. 4th 863, 866 (1996) (citation omitted).[14] This rule also applies to the lender/borrower relationship. "Absent special circumstances a loan

[13] For example, under applicable California law, a claim for fraudulent concealment must allege that: (1) defendant concealed a material fact, (2) defendant had a duty to disclose the fact to plaintiff, (3) defendant intentionally concealed the fact with intent to defraud plaintiff, (4) plaintiff was unaware of the fact and would not have acted as he did if he had known the concealed fact, and (5) as a result plaintiff sustained damage. See Levine v. Blue Shield of Cal., 189 Cal. App. 4th 1117, 1126-27 (2010).

[14] See also, e.g., Kimball v. Flagstar Bank F.S.B., 881 F. Supp. 2d 1209, 1217 (S.D. Cal. 2012) (mortgage lender's failure to disclose material facts known only to defendant and not to plaintiffs during mortgage refinancing transaction, including material disclosure notices, not actionable fraud); Poulsen v. Sterling Savs. Bank, Case No. 12-02306 (EDL), 2012 WL 3638605, at *6 (N.D. Cal. Aug. 22, 2012);

transaction is at arm's length and there is no fiduciary relationship between the borrower and lender." Oaks Mgmt. Corp. v. Super. Ct., 145 Cal. App. 4th 453, 455 (2006) (citing numerous California cases). In this instance, the California Litigation Claims have alleged no special circumstances. Indeed, the California Litigation Claims do not contain a single factual assertion regarding the relationship between any California Litigation Claimant and any defendant. The Amended Complaint contains overly broad and general allegations of the ResCap Defendants lending money, administering loans, selling loans and raising capital, all of which are common services provided by other banks and lenders in the Defendants' industry. The assertion by the California Litigation Claimants that the ResCap Defendants *allegedly* preformed such services in a predatory manner does not create a fiduciary duty running to the California Litigation Claimants. Rather, a fiduciary duty must be established prior to such alleged conduct.

45. Moreover, "[a] lender is under no duty 'to determine the borrower's ability to repay the loan. . . . The lender's efforts to determine the creditworthiness and ability to repay by a borrower are for the lender's protection, not the borrower's.'" Perlas v. GMAC Mortg., LLC, 187 Cal. App. 4th 429, 436 (2010) (citations omitted); see also Bonyadi v. CitiMortgage Bank, Case No. 12-5239-CAS FFMX, 2013 WL 877603, at *5 (C.D. Cal. Mar. 8, 2013) ("plaintiff cannot state a claim for fraud based upon on any failure on the part of Citi to disclose to her whether or not her loan was affordable for her. Borrowers must rely on their own judgment and risk assessment in deciding whether to accept a loan, and a lender cannot be liable in tort for failing to advise a borrower about a loan's affordability, as plaintiff contends."). Accordingly, borrowers cannot "rely upon a [lender's] knowingly [and allegedly] false determination that they *qualified* for the loans as a determination by [lender] that they could *afford* the loans." Id. at 431 (emphasis in original); see also Bonyadi, 2013 WL 877603, at *5;

Riggins v. Bank of America, N.A., Case No. 12-0033 (DOC), 2013 WL 319285, at *5 (C.D. Cal. Jan. 24, 2013).[15]

46. Here, the California Litigation Claimants can not seek to assert claims against the ResCap Defendants for the California Litigation Claimants' own failure to properly assess their financial condition and whether or not they could afford to make the payments due under the Loans.

B. California Litigation Claimants Fail to Allege Scienter or Intent to Defraud

47. The Amended Complaint also fails to allege facts indicating that the ResCap Defendants' alleged omissions or misrepresentations were made with the intent to defraud. The conclusory allegations in the Amended Complaint, including the assertion that the "[d]efendants intended to deceive [California Litigation Claimants] and induce their reliance, by intentionally failing to disclose the above concealments," and "the misrepresentations were made with the intention that [California Litigation Claimants] rely thereon," see Amended Complaint ¶¶ 201, 251, 271, are insufficient to state a claim and are mere conclusory statements. See Linear Tech. Corp. v. Applied Materials, Inc., 152 Cal. App. 4th 115, 132 (2007) ("[M]ere conclus[ory] allegations that the omissions were intentional and for the purpose of defrauding and deceiving plaintiffs . . . are insufficient to show fraud by concealment.") (citation omitted).[16]

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[15] California Litigation Claimants' claims that the banks assumed a duty by "offer[ing] an opportunity to plaintiffs for a loan modification," (Amended Complaint ¶ 184(i)), are also misplaced. See Settle v. World Savs. Bank, F.S.B., Case No. 11-00800-MMM, 2012 WL 1026103, at *8 (C.D. Cal. Jan. 11, 2012) ("[n]umerous cases have characterized a loan modification as a traditional money lending activity, warranting application of the rule articulated in Nymark v. Heart Fed. Savs. & Loan Ass'n., 231 Cal. App. 3d 1089, 1093, n.1 (1991), that a financial institution in general owes no duty of care to a borrower." The argument that defendants misled California Litigation Claimants through inflated appraisals similarly fails under its own weight. See Nymark, 231 Cal. App. 3d at 1097 ("in preparing the appraisal, defendant was acting in its conventional role as a lender of money to ascertain the sufficiency of the collateral as security for the loan. . . . Thus, we must conclude that defendant owed no duty of care to plaintiff in the preparation of the property appraisal.").

[16] There is also no basis for the California Litigation Claimants to assert fraud based on supposed misrepresentations to investors or the public about the quality of the loans sold to investors. (See Amended
(Cont.'d)

C. California Litigation Claimants Fail to Allege Reliance or Damages

48. The California Litigation Claimants' allegations of reliance on the Debtors' conduct or damages relating thereto are also insufficient as a matter of law. Though the California Litigation Claimants allege "harm" through a decline in property values, damage to the California Litigation Claimants' credit reports, and reduced access to other financing options, see Amended Complaint ¶¶ 197(d), 197(aa), 211, 264, 319, such bald statements, without support, is insufficient to plead reliance. See Bank of Am. Corp. v. Superior Court of Los Angeles Cnty., 198 Cal. App. 4th 862, 872-73 (2011). Indeed, those allegations would only be relevant to damages. Moreover, it is difficult to see how any reliance, even if alleged, could be justifiable. Agosta v. Astor, 120 Cal. App. 4th 596, 603 (2004), rehearing denied, review denied (justifiable reliance is element of all misrepresentation claims).

49. The main argument alleged in the California Litigation Claims alleges is that the California Litigation Claimants were brought into the ResCap Defendants' alleged scheme in the first instance through misrepresentations that the California Litigation Claimants could afford to make the payments due in connection with the Loans. However, the California Litigation Claimants are the parties with the most intimate knowledge of their financial ability to meet their obligations under the Loans. Therefore, the Amended Complaint's fraud and misrepresentation claims fail as a matter of law because there could not have been any justifiable reliance.

50. The California Litigation Claimants also fail to specifically plead any damages to their financial condition on account of any actions taken by the defendants. See

Complaint ¶ 177). See, e.g., Shroyer v. New Cingular Wireless Servs., Inc., 622 F.3d 1035, 1043 (9th Cir. 2010) (dismissal appropriate where claimants "could not allege that they actually read or heard the alleged misrepresentations. . . .") (citation and quotations omitted).

Mirkin v. Wasserman, 5 Cal. 4th 1082, 1092 (1993) ("[S]pecific pleading is necessary to 'establish a completed causal relationship' between the alleged misrepresentations and the harm claimed to have resulted therefrom."). The California Litigation Claimants have failed to adequately allege reliance or damages.

D. California Litigation Claimants' Origination-Based Claims are Time-Barred

51. In addition to the pleading deficiencies noted above, nearly all of the "origination-based" claims brought by the California Litigation Claimants for fraud, misrepresentation, and alleged unfair competition violations, are barred by the statute of limitations. Moreover, the California Litigation Claimants' attempt to resuscitate their claims by invocation of the discovery rule is unavailing. (See Amended Complaint ¶¶ 188, 219, 270).

52. First, the California Litigation Claimants' claim for unfair competition is subject to a four-year statute of limitations. Cal. Bus & Prof. Code § 17208. The discovery rule does not apply to unfair competition actions. Karl Storz Endoscopy Am., Inc. v. Surgical Techs., Inc., 285 F.3d 848, 857 (9th Cir. 2002). All but two[17] of the California Litigation Claimants obtained their loans prior to May 9, 2008, the date that is four years prior to the filing of the Initial Complaint, rendering substantially all of the unfair competition claims time-barred.

53. Second, the California Litigation Claimants' fraud-based claims are similarly barred by the applicable three-year statute of limitations. Cal. Code Civ. Proc. § 338(d). Although the discovery rule applies to the three-year statute of limitations in this regard, "the plaintiff 'must affirmatively excuse his failure to discover the fraud within three years after it took place, by establishing facts showing that he was not negligent in failing to make the

[17] Only Alex (Alejandra) Ibarra and Irma Laredo allegedly received loans after May 9, 2008. They allegedly obtained loans on May 13, 2008 and July 15, 2008, respectively. (See Amended Complaint, Appendix A ¶¶ 20, 40).

discovery sooner and that he had no actual or presumptive knowledge of facts sufficient to put him on inquiry.'" Sun'N Sand, Inc. v. United Cal. Bank, 21 Cal. 3d 671, 701-02 (1978) (citation omitted).[18]

54. The California Litigation Claimants have not alleged any such facts that would demonstrate that they were not negligent in failing to make the discovery of any such alleged fraud. In fact, as reflected in Appendix A attached to the Amended Complaint, the California Litigation Claimants obtained their loans between 2003 and 2008. (See Amended Complaint, Appendix A ¶¶ 1-42). Accordingly, even accepting their allegations as true, the California Litigation Claimants would have been on notice that misrepresentations were made soon after origination, or, at the very latest, in 2008. Therefore, given that the Initial Complaint was filed on May 9, 2012, the California Litigation Claimants' origination-based fraud allegations are time-barred.

E. California Litigation Claimants' Fraud Claims are Preempted by the Truth in Lending Act and the Fair Credit Reporting Act

55. The California Litigation Claimants' fraud-based claims should also be dismissed because they are preempted by the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* ("TILA"), and the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* ("FCRA").

56. TILA preempts inconsistent state laws. See 15 U.S.C. § 1610; Kajitani v. Downey Savs. & Loan Ass'n, F.A., 647 F. Supp. 2d 1208, 1220 (D. Haw. 2008) ("[T]o the extent [plaintiffs'] state law claims rest on TILA violations or concern subject matters explicitly preempted in 12 C.F.R. § 560.2(b), those claims are clearly preempted.").

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[18] "The rule is that the plaintiff *must plead and prove the facts* showing: (a) Lack of knowledge. (b) Lack of means of obtaining knowledge (in the exercise of reasonable diligence the facts could not have been discovered at an earlier date). (c) How and when [h]e did actually discover the fraud or mistake." Parsons v. Tickner, 31 Cal. App. 4th 1513, 1525 (1995) (emphasis in original).

57. Similarly, the FCRA "preempts all state law requirements relating to the furnishing of accurate information to credit reporting agencies." See, e.g., Montgomery v. PNC Bank, N.A., Case No. 12-2453, 2012 WL 3670650, at *5 (N.D. Cal. Aug. 24, 2012). Thus, the FCRA preempts the California Litigation Claims based on allegedly inaccurate information furnished to credit reporting agencies, to the extent that such claims are based on allegations of (i) reduced credit scores; (ii) unavailability of credit; (iii) increased cost of credit; (iv) reduced availability of goods and services tied to credit ratings; and (v) increased costs of those services." See id.

58. Thus, the California Litigation Claimants' first through fourth claims fail to state a claim against the Debtors and should be dismissed.

IV. THE AMENDED COMPLAINT'S ALLEGATIONS OF WRONGFUL FORECLOSURE ARE INSUFFICIENT TO STATE A CLAIM

59. The California Litigation Claimants make several factual allegations regarding the foreclosure on certain of the California Litigation Claimants' properties that fail to establish any liability for wrongful foreclosure. (See, e.g., Amended Complaint ¶ 336). The allegations that the defendants "acted outrageously" and "persistently with actual malice" in conducting foreclosures are irrelevant and conclusory, devoid of any underlying facts that would support those conclusions.

60. The California Litigation Claimants argue that the defendants had no power to foreclose on the Loans because the defendants were not the holders of the notes. (See Amended Complaint ¶ 329). This allegation is incorrect as a matter of law and should be rejected. See Gomes v. Countrywide Home Loans, Inc., 192 Cal. App. 4th 1149, 1156 (2011), cert. denied, 132 S. Ct. 419 (2011) ("nowhere does the [nonjudicial foreclosure] statute provide for a judicial action to determine whether the person initiating the foreclosure process is indeed

authorized, and we see no ground for implying such an action.").[19] Further, "California's statutory nonjudicial foreclosure scheme (§§ 2924–2924k) does not require that the foreclosing party have a beneficial interest in or physical possession of the note." Shuster v. BAC Home Loans Servicing, LP, 211 Cal. App. 4th 505, 511 (2012); accord Jenkins v. JPMorgan Chase Bank, N.A., 216 Cal. App. 4th 497 (2013); Debrunner, 204 Cal. App. 4th at 440 (2012) ("We . . . see nothing in the applicable statutes that precludes foreclosure when the foreclosing party does not possess the original promissory note.").

61. Further, the California Litigation Claimants also based their arguments relating to improper foreclosure on the unsupported factual allegations that the notes were improperly assigned. "The assignment of the debt (the promissory note), as opposed to the security (the [deed of trust]), commonly is not recorded, [so] the lender could have assigned the note to the beneficiary in an unrecorded document not disclosed to plaintiffs." Herrera v. Fed. Nat'l Mortg. Ass'n, 141 Cal. Rptr. 3d 326, 334 (2012); accord Calvo v. HSBC Bank USA, N.A., 199 Cal. App. 4th 118 (2011) (assignment of deed of trust need not be recorded in order to foreclose); see also Cal. Civ. Code § 2936 ("The assignment of a debt secured by mortgage carries with it the security."); see, e.g., Cockerell v. Title Ins. Co., 42 Cal. 2d 284, 289 (1954). Applying the foregoing legal standard here, the defendants therefore need not record an assignment of any such deed of trust or related document. Moreover, the Amended Complaint is devoid of any factual allegations suggesting that the note was not properly assigned.[20]

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[19] The California Litigation Claimants' references to Article 3 of the Uniform Commercial Code, see Amended Complaint ¶¶ 331-32, 334, is likewise unavailing and has been rejected by courts. See Debrunner v. Deutsche Bank Nat'l. Trust Co., 204 Cal. App. 4th 433, 440-41 (2012) ("Plaintiff's reliance on the Commercial Code provisions pertaining to negotiable instruments is misplaced. 'The comprehensive statutory framework established [in sections 2924 to 2924k] to govern nonjudicial foreclosure sales is intended to be exhaustive.'") (citation omitted).

[20] The California Litigation Claimants' allegations that MERS's status as beneficiary somehow taints the process is unfounded. (See Amended Complaint ¶¶ 129, 152, 303). Civil Code section 2924(a)(1) provides that "[t]he
(Cont.'d)

A. **California Litigation Claimants Fail to State a Claim For Violation of Civil Code § 2924 *et seq.***

62. The California Litigation Claimants' wrongful foreclosure claims fail to allege (i) prejudice and (ii) tender. With respect to prejudice, "[a] nonjudicial foreclosure sale is presumed to have been conducted regularly and fairly; one attacking the sale must overcome this common law presumption 'by pleading and proving an improper procedure and the resulting prejudice.'" Knapp v. Doherty, 123 Cal. App. 4th 76, 86, n4 (2004) (citation omitted). Accordingly, a borrower cannot set aside a foreclosure sale unless the defect was prejudicial. See, e.g., Herrera, 205 Cal. App. 4th at 335-36; Debrunner, 204 Cal. App. 4th at 443.

63. The Amended Complaint fails to include any statements that the California Litigation Claimants did not default on their loans. Therefore, the California Litigation Claimants have not been and cannot point to any prejudice. Moreover, as the California Litigation Claimants assert in the Amended Complaint, the Loans were undersecured at the time of the foreclosures and, therefore, the California Litigation Claimants could not have been prejudiced by losing their respective property because such properties did not have any equity that would have otherwise been available to the California Litigation Claimants.

64. Second, "[a] valid and viable tender of payment of the indebtedness owing is essential to an action to cancel a voidable sale under a deed of trust." Karlsen v. Am. Savs. &

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trustee, mortgagee, or beneficiary, or any of their authorized agents" may commence nonjudicial foreclosure. Cal. Civ. Code § 2924(a)(1). Under this grant of authority, MERS is authorized to commence foreclosure proceedings on behalf of the lender, as held by numerous courts. Elliott v. Mortg. Elec. Registration Sys. Inc., 2013 WL 1820904, at *3 (N.D. Cal. Apr. 30, 2013) ("MERS, as the nominee of the beneficiary, has the authority to foreclose and the authority to assign its beneficial interest to a third party."); Hensley v. Bank of New York Mellon, Case No. 1:10-CV-1316 AWI SMS, 2011 WL 2118810, at *3 (E.D. Cal. May 27, 2011) ("This contractual language [naming MERS the beneficiary in the deed of trust] is consistent with numerous cases in which courts have held that where MERS acts as a beneficiary under a deed of trust, it has the right to assign its interest."); Herrera, 205 Cal. App. 4th at 1498 ("The courts in California have universally held that MERS, as nominee beneficiary, has the power to assign its interest under a deed of trust. California Litigation Claimants granted MERS such authority by signing the deed of trust.").

Loan Ass'n, 15 Cal. App. 3d 112, 117 (1971). A party is "required to allege tender of the amount of [the] secured indebtedness in order to maintain any cause of action for irregularity in the sale procedure." Abdallah v. United Savs. Bank, 43 Cal. App. 4th 1101, 1109 (1996). California Litigation Claimants provide no facts indicating that any single individual tendered the amounts of their defaults. Therefore, the California Litigation Claimants fail to establish any basis for a claim against the ResCap Defendants on account of any actions or inactions taken by the Debtors in connection with the loans at issue.

V. THE AMENDED COMPLAINT'S ALLEGATION OF IMPROPER INFLUENCE OVER AN APPRAISER IS INSUFFICIENT TO ESTABLISH A CLAIM

65. The California Litigation Claimants' claims for alleged "improper influence over appraisal [violation of Cal. Civ Code § 1090.5] likewise falls flat. (See Amended Complaint ¶¶ 339-48). First, there is no private right of action to enforce Cal. Civ. Code § 1090.5. "[W]hen regulatory statutes provide a comprehensive scheme for enforcement by an administrative agency, the courts ordinarily conclude that the Legislature intended the administrative remedy to be exclusive unless the statutory language or legislative history clearly indicates an intent to create a private right of action. Peterson v. Cellco P'ship, 164 Cal. App. 4th 1583, 1295 (2008) (citation and quotation omitted). Nothing in Cal. Civ Code § 1090.5 indicates an intent to create a private right and the statutory scheme focuses on the individuals it regulates, real estate appraisers, and not on borrowers impacted by appraisals.

66. Moreover, the California Litigation Claimants' claims for "wrongful appraisal", which arose between 2003 and 2008, are also barred by the four-year statute of limitations set forth in Cal. Code Civ. Proc. § 343.

67. The claims for "wrongful appraisal" do not give rise to any liability on the part of the ResCap Defendants and the portion of the California Litigation Claims relating thereto should be disallowed in their entirety.

VI. RESERVATION OF RIGHTS

68. The Debtors further reserve all rights to object to one or more of the California Litigation Claims on the ground that Purported Counsel lacked standing and/or authority to assert such claims on behalf of the California Litigation Claimants. An agent filing a proof of claim on behalf of a creditor must "have express-and not merely implied-authority to do so." In re North Bay Gen. Hosp., Inc., 404 B.R. 443, 459 (Bankr. S.D. Tex. 2009). Indeed, "[t]he proof of claim form itself requires evidence of authority." 9 COLLIER ON BANKRUPTCY ¶ 3001.06 (16th ed. Rev. 2012); but see In re Jensen, Case No. 09-14830 (MG), 2010 WL 424690 (Bankr. S.D.N.Y. Feb. 3, 2010). Accordingly, in at least one case involving facts similar to those present here–where one law firm asserted identical or nearly identical claims on behalf of seventy-one claimants without evidence of the law firm's authority to do so, the court authorized discovery regarding the law firm's authority to execute the proofs of claim. See *Order Granting Relief and Directing Certain Discovery with Respect to Speights & Runyan*, In re W.R. Grace & Co., Case No. 01-01139 (JFK) (Bankr. D. Del. Sept. 23, 2005) [Docket No. 9501]; see also In re W.R. Grace & Co., 366 B.R. 302, 304 (Bankr. D. Del. 2007). In addition to reserving their rights to object generally on all other grounds, the Debtors reserve their right to seek discovery regarding the basis of Purported Counsel's authority to file claims on behalf of the California Litigation Claimants and, if warranted, object based on the law firm's lack of appropriate authority.

NOTICE

69. The Debtors have provided notice of this Motion in accordance with the Case Management Procedures Order, approved by this Court on May 23, 2012 [Docket No. 141].

CONCLUSION

WHEREFORE, the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem proper.

Dated: July 10, 2013

/s/ Norman S. Rosenbaum

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Special Litigation Counsel for the Debtors and Debtors in Possession

Schedule A

Schedule A-1

Claims Asserted Against Executive Trustee Services, LLC

Claim No.	Claimant Name	Claim No.	Claimant Name
3432	Alex Ibarra	3188	Martin Kassowitz
3473	Brenda Mella	3179	Mary Serrano
3422	Brian Foote	3167	Mesbel Mohamoud
3524	Carolyn Hairston	3153	Michael Brown
3122	Cecilia Chaube	3143	Michael Man
2982	Christina Palbicke	3125	Michael Moultrie
3416	Christine Petersen	3113	Olan Ross
3402	Claudinette Brown	3100	Patrick Gaston
3255	David Cruz	3092	Phyllis McCrea
3062	Deborah Albritton	3081	Regina Faison
3002	Evelyn Ross	3075	Rick Albritton
3015	Florastene Holden	3061	Rick Ewald
2911	Franco Soro	3046	Robin Gaston
3395	Gary Johnson	3039	Rodelina Santos
3201	Genevie Cabang	3028	Rosa Rodriguez
3386	Gloria Portillo	3007	Salvador Barajas
3378	Gregory Buck	2981	Sarah Sebagh
3369	Gricelda Ruano	2994	Shirley Kaplan
3360	Henry Completo	2969	Terrell Sullivan
3353	Ignacio Rodriguez	2955	Veronica Grey
3343	Irma Laredo	2946	Victor Pazos
3159	Joellyn Johnson	2939	William Mimiaga
3330	Joselito Mella	2930	Willie Gilmore
3321	Judy Lim	2922	Yesenia Cruz
3315	Julio Del Cid		
2899	Julio Gonzalez		
3304	Jun O. Santos		
3294	Khalil Subat		
3247	Lisa Simonyi		
3286	Lois Elisa Jordan		
3276	Magdalena Avila		
3269	Manija Subat		
3241	Manuela Badilla		
3223	Marcia Willoughby		
3216	Marco Badilla		
3206	Maria Barajas		
3194	Maria Elena Del Cid		

Schedule A-2

Claims Asserted Against GMAC Mortgage, LLC

Claim No.	Claimant Name	Claim No.	Claimant Name
3435	Alex Ibarra	3185	Martin Kassowitz
3470	Brenda Mella	3174	Mary Serrano
3425	Brian Foote	3163	Mesbel Mohamoud
3118	Cecilia Chaube	3157	Michael Brown
2991	Christina Palbicke	3141	Michael Man
3413	Christine Petersen	3130	Michael Moultrie
3403	Claudinette Brown	3116	Olan Ross
3257	David Cruz	3107	Patrick Gaston
3078	Deborah Albritton	3090	Phyllis McCrea
3006	Evelyn Ross	3080	Regina Faison
3020	Florastene Holden	3069	Rick Albritton
2907	Franco Soro	3058	Rick Ewald
3397	Gary Johnson	3048	Robin Gaston
3230	Genevie Cabang	3037	Rodelina Santos
3388	Gloria Portillo	3030	Rosa Rodriguez
3376	Gregory Buck	3010	Salvador Barajas
3371	Gricelda Ruano	2979	Sarah Sebagh
3362	Henry Completo	3000	Shirley Kaplan
3351	Ignacio Rodriguez	2968	Terrell Sullivan
3341	Irma Laredo	2957	Veronica Grey
3169	Joellyn Johnson	2948	Victor Pazos
3327	Joselito Mella	2941	William Mimiaga
3325	Judy Lim	2932	Willie Gilmore
3313	Julio Del Cid	2921	Yesenia Cruz
2901	Julio Gonzalez		
2902	Julio Gonzalez		
3302	Jun O. Santos		
3296	Khalil Subat		
3245	Lisa Simonyi		
3284	Lois Elisa Jordan		
3274	Magdalena Avila		
3267	Manija Subat		
3252	Manuela Badilla		
3225	Marcia Willoughby		
3214	Marco Badilla		
3205	Maria Barajas		
3196	Maria Elena Del Cid		

Schedule A-3

Claims Asserted Against GMAC-RFC Holding Company, LLC

Claim No.	Claimant Name	Claim No.	Claimant Name
3430	Alex Ibarra	3190	Martin Kassowitz
3476	Brenda Mella	3181	Mary Serrano
3420	Brian Foote	3170	Mesbel Mohamoud
3533	Carolyn Hairston	3154	Michael Brown
3108	Cecilia Chaube	3147	Michael Man
2989	Christina Palbicke	3123	Michael Moultrie
3418	Christine Petersen	3110	Olan Ross
3409	Claudinette Brown	3097	Patrick Gaston
3262	David Cruz	3094	Phyllis McCrea
3053	Deborah Albritton	3085	Regina Faison
2997	Evelyn Ross	3066	Rick Albritton
3011	Florastene Holden	3064	Rick Ewald
2908	Franco Soro	3044	Robin Gaston
3393	Gary Johnson	3042	Rodelina Santos
3234	Genevie Cabang	3022	Rosa Rodriguez
3383	Gloria Portillo	3003	Salvador Barajas
3381	Gregory Buck	2980	Sarah Sebagh
3366	Gricelda Ruano	2986	Shirley Kaplan
3357	Henry Completo	2965	Terrell Sullivan
3347	Ignacio Rodriguez	2953	Veronica Grey
3345	Irma Laredo	2952	Victor Pazos
3135	Joellyn Johnson	2936	William Mimiaga
3335	Joselito Mella	2928	Willie Gilmore
3319	Judy Lim	2919	Yesenia Cruz
3317	Julio Del Cid		
2897	Julio Gonzalez		
3307	Jun O. Santos		
3291	Khalil Subat		
3249	Lisa Simonyi		
3289	Lois Elisa Jordan		
3278	Magdalena Avila		
3272	Manija Subat		
3238	Manuela Badilla		
3229	Marcia Willoughby		
3219	Marco Badilla		
3204	Maria Barajas		
3198	Maria Elena Del Cid		

Schedule A-4

Claims Asserted Against Home Connects Lending Services, LLC

Claim No.	Claimant Name	Claim No.	Claimant Name
3437	Alex Ibarra	3184	Martin Kassowitz
3467	Brenda Mella	3177	Mary Serrano
3427	Brian Foote	3160	Mesbel Mohamoud
3521	Carolyn Hairston	3150	Michael Brown
3112	Cecilia Chaube	3139	Michael Man
2987	Christina Palbicke	3131	Michael Moultrie
3411	Christine Petersen	3119	Olan Ross
3406	Claudinette Brown	3105	Patrick Gaston
3263	David Cruz	3088	Phyllis McCrea
3086	Deborah Albritton	3079	Regina Faison
3009	Evelyn Ross	3071	Rick Albritton
3023	Florastene Holden	3055	Rick Ewald
2913	Franco Soro	3051	Robin Gaston
3399	Gary Johnson	3035	Rodelina Santos
3231	Genevie Cabang	3032	Rosa Rodriguez
3390	Gloria Portillo	3016	Salvador Barajas
3374	Gregory Buck	2977	Sarah Sebagh
3373	Gricelda Ruano	2993	Shirley Kaplan
3364	Henry Completo	2963	Terrell Sullivan
3349	Ignacio Rodriguez	2959	Veronica Grey
3338	Irma Laredo	2950	Victor Pazos
3172	Joellyn Johnson	2943	William Mimiaga
3333	Joselito Mella	2934	Willie Gilmore
3324	Judy Lim	2915	Yesenia Cruz
3312	Julio Del Cid		
2904	Julio Gonzalez		
3300	Jun O. Santos		
3298	Khalil Subat		
3243	Lisa Simonyi		
3282	Lois Elisa Jordan		
3280	Magdalena Avila		
3266	Manija Subat		
3261	Manuela Badilla		
3228	Marcia Willoughby		
3212	Marco Badilla		
3209	Maria Barajas		
3199	Maria Elena Del Cid		

Schedule A-5

Claims Asserted Against Homecomings Financial, LLC

Claim No.	Claimant Name	Claim No.	Claimant Name
3431	Alex Ibarra	3187	Martin Kassowitz
4159	Brenda Mella	3180	Mary Serrano
3421	Brian Foote	3168	Mesbel Mohamoud
3517	Carolyn Hairston	3151	Michael Brown
3124	Cecilia Chaube	3145	Michael Man
2978	Christina Palbicke	3126	Michael Moultrie
3417	Christine Petersen	3111	Olan Ross
3404	Claudinette Brown	3098	Patrick Gaston
3254	David Cruz	3093	Phyllis McCrea
3059	Deborah Albritton	3083	Regina Faison
3001	Evelyn Ross	3067	Rick Albritton
3013	Florastene Holden	3063	Rick Ewald
2906	Franco Soro	3045	Robin Gaston
3394	Gary Johnson	3040	Rodelina Santos
3236	Genevie Cabang	3026	Rosa Rodriguez
3385	Gloria Portillo	3005	Salvador Barajas
3379	Gregory Buck	2973	Sarah Sebagh
3368	Gricelda Ruano	2992	Shirley Kaplan
3359	Henry Completo	2967	Terrell Sullivan
3354	Ignacio Rodriguez	2954	Veronica Grey
3344	Irma Laredo	2945	Victor Pazos
3161	Joellyn Johnson	2938	William Mimiaga
3336	Joselito Mella	2929	Willie Gilmore
3320	Judy Lim	2923	Yesenia Cruz
3316	Julio Del Cid		
2898	Julio Gonzalez		
3305	Jun O. Santos		
3293	Khalil Subat		
3248	Lisa Simonyi		
3287	Lois Elisa Jordan		
3277	Magdalena Avila		
3270	Manija Subat		
3240	Manuela Badilla		
3222	Marcia Willoughby		
3217	Marco Badilla		
3207	Maria Barajas		
3193	Maria Elena Del Cid		

Schedule A-6

Claims Asserted Against Residential Capital, LLC

Claim No.	Claimant Name	Claim No.	Claimant Name
3434	Alex Ibarra	3186	Martin Kassowitz
3472	Brenda Mella	3176	Mary Serrano
3423	Brian Foote	3164	Mesbel Mohamoud
3525	Carolyn Hairston	3152	Michael Brown
3120	Cecilia Chaube	3142	Michael Man
2984	Christina Palbicke	3129	Michael Moultrie
3414	Christine Petersen	3115	Olan Ross
3405	Claudinette Brown	3101	Patrick Gaston
3256	David Cruz	3091	Phyllis McCrea
3073	Deborah Albritton	3076	Regina Faison
3004	Evelyn Ross	3068	Rick Albritton
3018	Florastene Holden	3060	Rick Ewald
2910	Franco Soro	3047	Robin Gaston
3396	Gary Johnson	3038	Rodelina Santos
3202	Genevie Cabang	3029	Rosa Rodriguez
3387	Gloria Portillo	3019	Salvador Barajas
3377	Gregory Buck	2975	Sarah Sebagh
3370	Gricelda Ruano	2996	Shirley Kaplan
3361	Henry Completo	2970	Terrell Sullivan
3352	Ignacio Rodriguez	2956	Veronica Grey
3342	Irma Laredo	2947	Victor Pazos
3166	Joellyn Johnson	2940	William Mimiaga
3328	Joselito Mella	2931	Willie Gilmore
3326	Judy Lim	2924	Yesenia Cruz
3314	Julio Del Cid		
2900	Julio Gonzalez		
3303	Jun O. Santos		
3295	Khalil Subat		
3246	Lisa Simonyi		
3285	Lois Elisa Jordan		
3275	Magdalena Avila		
3268	Manija Subat		
3251	Manuela Badilla		
3224	Marcia Willoughby		
3215	Marco Badilla		
3208	Maria Barajas		
3195	Maria Elena Del Cid		

Schedule A-7

Claims Asserted Against Residential Funding Company, LLC

Claim No.	Claimant Name	Claim No.	Claimant Name
3429	Alex Ibarra	3189	Martin Kassowitz
3478	Brenda Mella	3182	Mary Serrano
3424	Brian Foote	3171	Mesbel Mohamoud
3523	Carolyn Hairston	3155	Michael Brown
3128	Cecilia Chaube	3146	Michael Man
2976	Christina Palbicke	3136	Michael Moultrie
3419	Christine Petersen	3109	Olan Ross
3401	Claudinette Brown	3102	Patrick Gaston
3260	David Cruz	3096	Phyllis McCrea
3056	Deborah Albritton	3084	Regina Faison
2999	Evelyn Ross	3074	Rick Albritton
3027	Florastene Holden	3065	Rick Ewald
2909	Franco Soro	3043	Robin Gaston
3392	Gary Johnson	3041	Rodelina Santos
3233	Genevie Cabang	3024	Rosa Rodriguez
3384	Gloria Portillo	3012	Salvador Barajas
3380	Gregory Buck	2972	Sarah Sebagh
3367	Gricelda Ruano	2990	Shirley Kaplan
3358	Henry Completo	2966	Terrell Sullivan
3355	Ignacio Rodriguez	2961	Veronica Grey
3346	Irma Laredo	2944	Victor Pazos
3137	Joellyn Johnson	2937	William Mimiaga
3332	Joselito Mella	2925	Willie Gilmore
3318	Judy Lim	2918	Yesenia Cruz
3309	Julio Del Cid		
2896	Julio Gonzalez		
3306	Jun O. Santos		
3292	Khalil Subat		
3250	Lisa Simonyi		
3288	Lois Elisa Jordan		
3273	Magdalena Avila		
3271	Manija Subat		
3239	Manuela Badilla		
3221	Marcia Willoughby		
3218	Marco Badilla		
3203	Maria Barajas		
3192	Maria Elena Del Cid		

Schedule A-8

Claims Asserted Against Residential Funding Real Estate Holdings, LLC

Claim No.	Claimant Name
3438	Alex Ibarra
3477	Brenda Mella
3428	Brian Foote
3520	Carolyn Hairston
3104	Cecilia Chaube
2974	Christina Palbicke
3410	Christine Petersen
3408	Claudinette Brown
3253	David Cruz
3050	Deborah Albritton
2995	Evelyn Ross
3025	Florastene Holden
2905	Franco Soro
3400	Gary Johnson
3235	Genevie Cabang
3391	Gloria Portillo
3382	Gregory Buck
3365	Gricelda Ruano
3356	Henry Completo
3348	Ignacio Rodriguez
3337	Irma Laredo
3132	Joellyn Johnson
3331	Joselito Mella
3322	Judy Lim
3311	Julio Del Cid
2895	Julio Gonzalez
3308	Jun O. Santos
3299	Khalil Subat
3242	Lisa Simonyi
3290	Lois Elisa Jordan
3279	Magdalena Avila
3264	Manija Subat
3237	Manuela Badilla
3226	Marcia Willoughby
3220	Marco Badilla
3211	Maria Barajas
3200	Maria Elena Del Cid
3191	Martin Kassowitz
3173	Mary Serrano
3158	Mesbel Mohamoud
3148	Michael Brown
3138	Michael Man
3134	Michael Moultrie
3121	Olan Ross
3103	Patrick Gaston
3095	Phyllis McCrea
3087	Regina Faison
3072	Rick Albritton
3054	Rick Ewald
3052	Robin Gaston
3034	Rodelina Santos
3033	Rosa Rodriguez
3014	Salvador Barajas
2971	Sarah Sebagh
2988	Shirley Kaplan
2962	Terrell Sullivan
2960	Veronica Grey
2951	Victor Pazos
2935	William Mimiaga
2926	Willie Gilmore
2916	Yesenia Cruz

Schedule A-9

Claims Asserted Against Residential Mortgage Real Estate Holdings, LLC

Claim No.	Claimant Name	Claim No.	Claimant Name
3436	Alex Ibarra	3183	Martin Kassowitz
3469	Brenda Mella	3178	Mary Serrano
3426	Brian Foote	3162	Mesbel Mohamoud
3529	Carolyn Hairston	3149	Michael Brown
3114	Cecilia Chaube	3140	Michael Man
2985	Christina Palbicke	3133	Michael Moultrie
3412	Christine Petersen	3117	Olan Ross
3407	Claudinette Brown	3106	Patrick Gaston
3258	David Cruz	3089	Phyllis McCrea
3082	Deborah Albritton	3077	Regina Faison
3008	Evelyn Ross	3070	Rick Albritton
3021	Florastene Holden	3057	Rick Ewald
2912	Franco Soro	3049	Robin Gaston
3398	Gary Johnson	3036	Rodelina Santos
3232	Genevie Cabang	3031	Rosa Rodriguez
3389	Gloria Portillo	3017	Salvador Barajas
3375	Gregory Buck	2983	Sarah Sebagh
3372	Gricelda Ruano	2998	Shirley Kaplan
3363	Henry Completo	2964	Terrell Sullivan
3350	Ignacio Rodriguez	2958	Veronica Grey
3339	Irma Laredo	2949	Victor Pazos
3175	Joellyn Johnson	2942	William Mimiaga
3334	Joselito Mella	2933	Willie Gilmore
3323	Judy Lim	2920	Yesenia Cruz
3310	Julio Del Cid		
2903	Julio Gonzalez		
3301	Jun O. Santos		
3297	Khalil Subat		
3244	Lisa Simonyi		
3283	Lois Elisa Jordan		
3281	Magdalena Avila		
3265	Manija Subat		
3259	Manuela Badilla		
3227	Marcia Willoughby		
3213	Marco Badilla		
3210	Maria Barajas		
3197	Maria Elena Del Cid		

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	)	Chapter 11
Debtors.	)	Jointly Administered

ORDER GRANTING THE DEBTORS' OBJECTION TO PROOFS OF CLAIM FILED BY CERTAIN PLAINTIFFS IN CALIFORNIA LITIGATION

Upon the objection to the claims of the California Litigation Claimants (the "Objection")[1] filed by Residential Capital, LLC and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtor-in-possession, seeking entry of an order, pursuant to section 502(b) of the Bankruptcy Code and Rule 3007(d) of the Bankruptcy Rules, disallowing and expunging the California Litigation Claims on the grounds that they fail to state a claim against the Debtors, all as more fully described in the Objection; and due and proper notice of the Objection having been provided; and it appearing that no other or further notice need be provided; and the Court having reviewed the Objection, and having found and determined that the relief sought in the Objection is in the best interests of the Debtors, their estates, creditors, and all parties in interest and that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Objection is **SUSTAINED** and the relief requested in the Objection is granted to the extent provided therein.

[1] Capitalized terms not otherwise defined herein have the meanings given to them in the Objection.

2. Pursuant to section 502(b) of the Bankruptcy Code, the California Litigation Claims are hereby disallowed with prejudice and expunged in their entirety with prejudice from the Debtors' Claims Register.

3. If the relief requested in the Objection is not granted herein as to any particular claim included in the California Litigation Claims, the Debtors may object to such claim in the future on any basis other than the bases set forth in the Objection.

4. The disallowance and expungement of the California Litigation Claims does not constitute any admission or finding with respect to any other claims, and the Debtors' right to object to any other claims on any basis is hereby preserved.

5. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Objection.

6. The terms and conditions of this Order shall be immediately effective and enforceable upon entry of the Order.

7. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: August __, 2013
New York, New York

____
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 2

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	LA CV12-5016 JAK (AGRx)	Date	September 24, 2012
Title	Carolyn Hairston, et al. v. Ally Bank, N.A., et al.		

Present: The Honorable	JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE

Andrea Keifer	Alex Joko
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Sasan Behnood	Rebecca Saelao

Proceedings: **MOTION TO DISMISS FILED BY ALLY BANK, ALLY FINANCIAL INC., AND GMAC MORTGAGE GROUP LLC (Dkt. 9)**

The motion hearing is held with respect to Defendants' Motion to Dismiss each of the eight causes of action set forth in the Complaint. The Court states its detailed, tentative views on the record. The Court is inclined to grant the motion to dismiss, without prejudice, as to each of the following causes of action: (i) Fraudulent Concealment (First); (ii) Intentional Misrepresentation (Second); (iii) Negligent Misrepresentation (Third); (iv) Cal. Bus. & Prof. Code § 17200 (Fourth); (v) Wrongful Foreclosure (Fifth); and (vi) Truth in Lending Act, 15 U.S.C. § 1601 et seq. ("TILA") (Sixth). The Court is inclined to grant the motion to dismiss, with prejudice, as to the following claims: (i) Violation of Appraisal Independence in violation of Dodd-Frank, 12 U.S.C. § 1640 et seq. (Seventh)**;** and (ii) Violation of Appraiser Independence in violation of 12 C.F.R. § 225.65 and 12 C.F.R. § 323.5 (Eighth).

The Court's general view is that the complaint suffers from an overall lack of clarity and specificity. Thus, despite its great length, it fails to present a clear and meaningful statement of each claim by each Plaintiff against each Defendant. It, therefore, fails to meet the standards of Rule 8. In any amended complaint, Plaintiffs must correct this overarching problem by properly addressing, with sufficient particularity and clarity, the claims that each individual Plaintiff is advancing against each individual Defendant.

Turning to the challenge to each of the eight causes of action, the first cause of action should be dismissed with leave to amend. A cause of action for fraudulent concealment must contain five elements: "(1) the defendant must have concealed or suppressed a material fact, (2) *the defendant must have been under a duty to disclose the fact to the plaintiff,* (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage." *Levine v. Blue Shield of California*, 189 Cal. App. 4th 1117, 1126-27 (2010) (internal quotations omitted, italics in original).

"[A]s a general rule, a financial institution owes no duty of care to a borrower when the institution's involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	LA CV12-5016 JAK (AGRx)	Date	September 24, 2012
Title	Carolyn Hairston, et al. v. Ally Bank, N.A., et al.		

of money." *Nymark v. Heart Fed. Savings & Loan Ass'n*, 231 Cal. App. 3d 1089, 1096 (1991); *see also Resolution Trust Corp. v. BVS Dev, Inc.*, 42 F.3d 1206, 1214 (9th CIr.1994) ("Under California law, a lender does not owe a borrower or third party any duties beyond those expressed in the loan agreement, excepting those imposed due to special circumstance or a finding that a joint venture exists.")

A fraudulent concealment claim is subject to Fed. R. Civ. P. 9(b), which provides that "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Rule 9(b) has three goals: "(1) to provide defendants with adequate notice to allow them to defend the charge and deter plaintiffs from the filing of complaints 'as a pretext for the discovery of unknown wrongs'; (2) to protect those whose reputation would be harmed as a result of being subject to fraud charges; and (3) to 'prohibit [ ] plaintiffs[s] from unilaterally imposing upon the court, the parties and society enormous social and economic costs absent some factual basis.'" *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009) (brackets in original). Claims based on fraud must include "the who, what, when, where, and how" of the alleged misconduct, and the claims must "be specific enough to give defendants notice of the particular misconduct . . . so that they can defend against the charge and not just deny that they have done anything wrong." *Id.* at 1124 (internal quotations omitted). Rule 9(b) "does not allow a complaint to merely lump defendants together"; the plaintiff must "inform each defendant separately of the allegations surrounding his alleged participating in the fraud," identifying the role of each defendant in the scheme. *Swartz v. KPMG LLP*, 476 F.3d 756, 764-65 (9th Cir. 2007).

The first cause of action contains only very general allegations about Defendants, *i.e.,*that all Defendants concealed material facts about their business practices in an attempt to defraud all Plaintiffs, to damage the housing market, and to make profits. As pleaded, the cause of action suffers from two major deficiencies.

First, the complaint fails to allege the nature or basis for any duty each Defendant had to each Plaintiff from which a disclosure obligation would arise. A claim for fraudulent concealment requires that "the defendant must have been under a duty to disclose the fact to the plaintiff," *Levine*, 189 Cal. App. 4th at 1126. But under *Nyman*, a financial institution owes no duty of care to a borrower when it is acting in its traditional role. Here, it is unclear from the allegations in the complaint how Defendants exceeded the scope of their traditional roles as money lenders in their relationships with Plaintiffs.

Second, the complaint fails to meet the requirements of Rule 9(b). Plaintiffs lump defendants together and fail to describe their individual roles in the alleged fraudulent scheme. The "who, what, when, where, why, and how" of the allegedly fraudulent conduct are vague at best; there are no specifics about which Defendants allegedly took actions that may have affected which Plaintiffs. And, although most of the allegations refer to events that took place between 2003 and 2008, there is no specificity as to when during that five-year period any specific conduct occurred or where it allegedly occurred. The allegations are, in short, vague and general rather than particular, as required by Rule 9.

The second cause of action for intentional misrepresentation, should be dismissed with leave to amend for similar reasons. Intentional misrepresentation has five elements: "(1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage." *Anderson v. Deloitte &*

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	LA CV12-5016 JAK (AGRx)	Date	September 24, 2012
Title	Carolyn Hairston, et al. v. Ally Bank, N.A., et al.		

Touche LLP, 56 Cal. App. 4th 1468, 1474 (1997). Intentional misrepresentation is a claim for fraud; it is, therefore, subject to aforementioned heightened pleading requirements set forth in Fed. R. Civ. P. 9(b). *See Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103-04 (9th Cir. 2003) (a claim "'grounded in fraud' . . . must satisfy the particularity requirement of Rule 9(b).").

The second cause of action suffers from the same particularity defects described above with respect to the first cause of action. Thus, once again, the allegations of the complaint lump Defendants together, and fail to specify the relationships between any individual Defendants and each of the Plaintiffs or the dates and places where the alleged events took place. Again, as pleaded, this claim is presented as a long, generalized theory, rather than a specific statement of alleged wrongdoing that provides to each Defendant notice of its particular, alleged misconduct.

The third cause of action, for negligent misrepresentation, should be dismissed with leave to amend for the same reasons. Negligent misrepresentation has five elements: "(1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage." *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Cambridge Integrated Servs. Group, Inc.*, 171 Cal. App. 4th 35, 50 (2009) (internal quotations omitted). A negligent misrepresentation claim must meet the requirements of Rule 9(b). *Neilson v. Union Bank of California, N.A.*, 290 F. Supp. 2d 1101, 1141 (C.D. Cal. 2003); *see also Errico v. Pac. Capital Bank, N.A.*, 753 F. Supp. 2d 1034, 1149 (N.D. Cal. 2010).

The fourth cause of action, for unfair competition under Cal. Bus. & Prof. Code § 17200, should be dismissed without prejudice. To state a claim for unfair competition, a plaintiff must allege that a defendant engaged in an "unlawful, unfair or fraudulent business act or practice" or in "unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200. Fraud is not a necessary element of an unfair competition claim, but a "plaintiff may allege a unified course of fraudulent conduct and rely entirely on that course of conduct as the basis of that claim." *Kearns*, 567 F.3d at 1125. In such a case, "the claim is said to be 'grounded in fraud' or to 'sound in fraud,' and the pleading . . . as a whole must satisfy the particularity requirement of Rule 9(b)." *Id.* As a claim dependent on the conduct described in the first three causes of action, the fourth cause of action suffers from the same particularity defects.

The fifth cause of action, for wrongful foreclosure under Cal. Civ. Code § 2924, should be dismissed without prejudice. In *Gomes v. Countrywide Home Loans, Inc.*, 192 Cal. App. 4th 1149, 1155 (2011), a California Court of Appeal rejected a plaintiff's contention that § 2924 "allows for an action to test whether the person initiating the foreclosure has the authority to do so," after the plaintiff challenged the authority of MERS to initiate a foreclosure. The court stated that the "recognition of the right to bring a lawsuit to determine a nominee's authorization to proceed with foreclosure on behalf of the noteholder would fundamentally undermine the nonjudicial nature of the process" under § 2924. *Id.* However, the court differentiated *Gomes* from other cases where "the plaintiff's complaint identified a *specific factual basis* for alleging that the foreclosure was not initiated by the correct party." *Id.* at 1156 (noting that "Gomes has not asserted *any* factual basis to suspect that MERS lacks authority" and that he "simply seeks the right to bring a lawsuit to find out *whether* MERS has such authority"). Similarly, other courts have found that *Gomes* allows for some judicial challenges to foreclosure under § 2924. *See, e.g.*,

Wise v. Wells Fargo Bank, N.A., 850 F. Supp. 2d 1047, 1051 (C.D. Cal. 2012) ("This case is a challenge to the principal's authority to foreclose rather than to whether an agent had the authorization of its principal to initiate foreclosure."); *Sacchi v. Mortg. Elec. Registration Sys., Inc.*, No. CV 11-1658 AHM (CWx), 2011 WL 2533029, *8 (C.D. Cal. 2011) (noting that *Gomes* "suggested that a cause of action for wrongful foreclosure might survive if 'the plaintiff's complaint identified a *specific factual basis*'" and that "[h]ere, Plaintiffs have alleged just such a specific factual basis"). Plaintiffs' assertions under the fifth cause of action fall far short of a "specific factual basis." The allegation in the complaint that "Defendants are not the holders of the notes and deeds of trust and are not operating under a valid power" is not sufficient, under *Gomes*, to state a claim pursuant to § 2924. Furthermore, to the extent that Plaintiffs seek to rely simply on the theory that MERS was not properly authorized to proceed with foreclosures, Plaintiffs' cause of action fails under *Gomes*.

The sixth cause of action, for violations of the TILA, 15 U.S.C. § 1601 et seq., should be dismissed without prejudice. Fed. R. Civ. P. 8(a)(2), requires that, to state a claim, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Detailed factual allegations are not required, but Rule 8 "demands more than an unadorned, the defendant-unlawfully-harmed-me accusation. . . . A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The pleading is required to have "enough facts to state a claim to relief that is plausible on its face," and it is not enough to just leave "open the possibility that a plaintiff might later establish some 'set of [undisclosed] facts' to support recovery." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 561, 570 (2007) (brackets in original). The sixth claim fails to meet these requirements. Plaintiffs' assertions are no more than a laundry list of supposed violations, rather than a statement of facts that supports a plausible basis to assert a claim for the violation of the TILA. Plaintiffs must provide more specific facts that state a claim for relief that is plausible on its face.

The seventh cause of action, for violations of appraisal independence under 15 U.S.C. § 1639e, should be dismissed with prejudice. Under 15 U.S.C. § 1639e, it is "unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any act or practice that violates appraisal independence." The statute was passed in July 2010, as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. But, the wrongdoing that is alleged in the complaint occurred prior to the enactment of this legislation. Plaintiffs' argument that this provision in the statute has a retroactive effect is unpersuasive. There is no statement to that effect in the statute itself. And, there is a "traditional presumption against applying statutes affecting substantive rights, liabilities, or duties to conduct arising before their enactment." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 278 (1994). When Congress has not expressly called for the retroactive application of a statute, "the court must determine whether the new statute would have retroactive effect, *i.e.,* whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result." *Id.* at 280. Plaintiffs point to a recent district court decision that found that a whistleblower provision of Dodd-Frank was to have retroactive effect. But, the provision had nothing to do with 15 U.S.C. § 1639e and involved "an amendment under Dodd-Frank operat[ing] retroactively because it is a clarification of the original statute." *Leshinsky v. Telvent GIT, S.A.*, No. 10 Civ. 4511(JPO), 2012 WL 2686111, *18 (S.D.N.Y. July 9, 2012). There is no similar

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	LA CV12-5016 JAK (AGRx)	Date	September 24, 2012
Title	Carolyn Hairston, et al. v. Ally Bank, N.A., et al.		

reason to find that Congress intended to have 15 U.S.C. § 1639e apply retroactively.

The eighth cause of action, for violations of appraiser independence under 12 C.F.R. § 225.65 and 12 C.F.R. § 323.5, should be dismissed with prejudice. The regulations, 12 C.F.R. § 225.65 and 12 C.F.R. § 323.5, were adopted by the Federal Reserve System and the Federal Deposit Insurance Corporation, respectively. Each provides that "[i]f an appraisal is prepared by a staff appraiser, that appraiser must be independent of the lending, investment, and collection functions and not involved, except as an appraiser, in the federally related transaction, and have no direct or indirect interest, financial or otherwise, in the property." In determining whether a private right of action arises from either of these regulations, the statute that gave rise to the regulation must be examined. Thus, the "[l]anguage in a regulation may invoke a private right of action that Congress through statutory text created, but it may not create a right that Congress has not." *Alexander v. Sandoval*, 532 U.S. 275, 291 (2001); *see also N. Cnty. Commc'ns Corp. v. California Catalog & Tech.*, 594 F.3d 1149, 1155 (9th Cir. 2010) (explaining that "it is not enough for North County to broadly proclaim that it is entitled to a compensation under the Federal Communications Act. Instead, North County 'must demonstrate that a federal statute vests [North County] with such a right'" (brackets in original)). There is nothing presented here that shows any Congressional intent through 12 U.S.C. § 1818 or 12 U.S.C. § 1819 -- which are the basis for the regulations on which Plaintiffs rely -- to create such a private right of action. Standing alone, the regulations cannot do so.

The Court adheres to its tentative views. The Court GRANTS the motion to dismiss with regard to the first, second, third, fourth, fifth, and sixth causes of action, without prejudice, *i.e.,* with leave to amend. The Court GRANTS the motion to dismiss with regard to the seventh and eighth causes of action, with prejudice.

The Court confers with counsel regarding the parties' September 19, 2012 Joint Report and sets the following deadlines:

October 31, 2012:	Last day to amend or add parties
December 14, 2013:	Joint Report re Settlement Procedure
January 7, 2013 at 1:30 p.m.:	Status Conference re Settlement
July 2, 2013:	Non-Expert Discovery Cut-Off
July 9, 2013:	Initial Expert Disclosures
July 23, 2013:	Rebuttal Expert Disclosures
August 6, 2013:	Expert Discovery Cut-Off
August 6, 2013:	Last day to hear motions
September 23, 2013 at 3:00 p.m.:	Final Pretrial Conference / Motions in Limine

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	LA CV12-5016 JAK (AGRx)	Date	September 24, 2012
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October 4, 2013 at 3:00 p.m.: Status Conference re Exhibits

October 8, 2013 at 9:00 a.m.: Jury Trial (est. 18 days)

Counsel shall meet and confer regarding a possible settlement method and include in the December 14, 2012 Joint Report a description of their respective views as to the type of alternative dispute resolution that may be effective in this matter, the name of any neutral agreed upon by the parties and the proposed date by which the process can be completed.

Counsel for all parties are reminded of their respective obligations to comply with this Court's standing orders with respect to documents to be prepared for, and filed in connection with, the Final Pretrial Conference.

IT IS SO ORDERED.

: 32

Initials of Preparer ak

EXHIBIT 3

Case 2:12-cv-05016-JAK-AGR Document 37 Filed 01/31/13 Page 1 of 1 Page ID #:567

Vito Torchia, Jr. (SBN244687);
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CAROLYN HAIRSTON, an individual; et. al. Plaintiff(s), v. ALLY BANK, N.A.; et. al Defendant(s).	CASE NUMBER 2:12-cv-05016-JAK (AGRx) **NOTICE OF DISMISSAL PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 41(a) or (c)**

PLEASE TAKE NOTICE: (*Check one*)

☑ This action is dismissed by the Plaintiff(s) in its entirety.

☐ The Counterclaim brought by Claimant(s) ______________________ is dismissed by Claimant(s) in its entirety.

☐ The Cross-Claim brought by Claimants(s) ______________________ is dismissed by the Claimant(s) in its entirety.

☐ The Third-party Claim brought by Claimant(s) ______________________ is dismissed by the Claimant(s) in its entirety.

☐ **ONLY** Defendant(s) ______________________

____
is/are dismissed from (*check one*) ☐ Complaint, ☐ Counterclaim, ☐ Cross-claim, ☐ Third-Party Claim brought by ______________________.

The dismissal is made pursuant to F.R.Civ.P. 41(a) or (c).

January 31, 2013 — *Date*

/s/ Vito Torchia, Jr. — *Signature of Attorney/Party*

NOTE: F.R.Civ.P. 41(a): This notice may be filed at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs.

F.R.Civ.P. 41(c): Counterclaims, cross-claims & third-party claims may be dismissed before service of a responsive pleading or prior to the beginning of trial.

EXHIBIT 4

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RECEIVED
11/5/12

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

CAROLYN HAIRSTON, an individual; CHRISTINE PETERSEN, an individual; WILLIAM MIMIAGA, an individual; ROBIN GASTON, an individual; PATRICK GASTON, an individual; MARY SERRANO, an individual; SARAH SEBAGH, an individual; RICK ALBRITTON, an individual; DEBORAH ALBRITTON, an individual; VERONICA GREY, an individual; BRENDA MELLA, an individual; JOSELITO MELLA, an individual; MICHAEL MAN, an individual; JUDY LIM, , an individual; DAVID CRUZ, an individual; YESENIA CRUZ, an individual; GREGORY BUCK, an individual; CRISTINA PALBICKE, an individual; KHALIL SUBAT , an individual; MANIJA SUBAT, an individual; GENEVIE CABANG, an individual; JULIO GONZALEZ, an individual; LISA SIMONYI , an individual; RICK EWALD, an individual; REGINA FAISON, an individual; ALEX

Case No.: 12-5016-JAK (AGRx)
Honorable Judge John A. Kronstadt
Courtroom 750

FIRST AMENDED COMPLAINT FOR:

1. **FRAUDULENT CONCEALMENT [VIOLATION OF CIV. CODE §§ 1572, 1709 AND 1710];**
2. **INTENTIONAL MISREPRESENTATION [VIOLATION OF CIV. CODE §§ 1572, 1709 AND 1710];**
3. **NEGLIGENT MISREPRESENTATION [VIOLATION OF CIV. CODE §§ 1572, 1709 AND 1710];**
4. **UNFAIR COMPETITION [VIOLATION OF BUS. & PROF. CODE §17200 ET SEQ.];**
5. **WRONGFUL FORECLOSURE [VIOLATION OF CIV CODE § 2924];**
6. **IMPROPER INFLUENCE OVER APPRAISER [VIOLATION OF CAL. CIV. CODE §1090.5]**

[JURY TRIAL DEMANDED]

IBARRA, an individual; MARIA ELENA DEL CID, an individual; JULIO DEL CID, an individual; MESBEL MOHAMOUD, an individual; MICHAEL MOULTRIE, an individual; WILLIE GILMORE, an individual; PHYLLIS MCCREA, an individual; CECILIA CHAUBE, an individual; MAGDALENA AVILA, an individual; GRICELDA RUANO, an individual; ELISA JORDAN, an individual; LOIS TERRELL SULLIVAN, an individual; GLORIA PORTILLO, an individual; FLORASTENE HOLDEN, an individual; MARCO BADILLA, an individual; MANUELA BADILLA, an individual; IGNACIO RODRIGUEZ, an individual; ROSA RODRIGUEZ, an individual; SALVADOR BARAJAS, an individual; MARIA BARAJAS, an individual; BRIAN FOOTE, an individual; OLAN ROSS, an individual; EVELYN ROSS, an individual; GARY JOHNSON, an individual; JOELLYN JOHNSON, an individual; RODELINA SANTOS, an individual; JUN O. SANTOS, an individual; MICHAEL BROWN, an individual; CLAUDINETTE BROWN, an individual; MARTIN KASSOWITZ, an individual; SHIRLEY KAPLAN, an individual;
HENRY COMPLETO, an individual; IRMA LAREDO, an individual; MARCIA WILLOUGHBY, an individual; VICTOR PAZOS, an individual.

Plaintiffs,

vs.

ALLY BANK, N.A., f/k/a GMAC BANK, a Utah Corporation, in its own capacity and as an acquirer of certain assets and liabilities of GMAC; GMAC, a National Banking Association; ALLY FINANCIAL, INC. f/k/a/ GMAC, LLC, a Delaware Corporation; GMAC MORTGAGE GROUP, INC., A Delaware Corporation; RESIDENTITAL CAPITAL, LLC f/k/a RESIDENTIAL CAPITAL CORPORATION, a Delaware Corporation; GMAC-RFC HOLDING COMPANY, LLC d/b/a/ GMAC RESIDENTIAL FUNDING CORPORATION, a Delaware Corporation; RESIDENTIAL FUNDING COMPANY, LLC f/k/a RESIDENTIAL FUNDING CORPORATION, a Delaware Corporation; HOMECOMINGS FINANCIAL, LLC, a Delaware Corporation; EXECUTIVE TRUSTEE SERVICES DBA ETS SERVICES ,LLC, a Delaware limited liability company; HOME CONNECTS LENDING SERVICES, LLC, a Pennsylvania limited liability company; MTC FINANCIAL INC. d/b/a TRUSTEE CORPS, a California Corporation; and Does 1 through 1000 , inclusive.

Defendants.

TABLE OF CONTENTS

Plaintiffs, and each of them, hereby demand a jury trial and allege as follows:

NATURE OF ACTION

1. Defendant Banks have for the last decade taken the losses of others and used them for their own private gain. That Defendants are in the business of making profit, and are entitled to do so is not at issue. Nor is at issue that Defendants engage in an inherently lucrative business. But it is the lengths to which Defendants have gone, to attain that profit, which is. It is where corporate lust for profit leads corporations and banks to abandon common principles of fair business dealing so well-entrenched in the human consciousness, that they need not even be announced by law, but are inherently apparent to all of us, that the courts *must* intervene – that an example *must* be set. A line must be drawn putting Corporations, Banks, and Defendants herein on notice that where their greed exceeds the extant public need for informed disclosure in business dealings, the law will not sanction.

2. With greed as their motive, Defendants set out upon a massive and centrally directed fraud by which Defendants placed homeowners into loans which Defendants *knew* Plaintiffs could not afford, abandoned industry standard underwriting guidelines, and intentionally inflated the appraisal values of homes throughout California for the sole purpose of herding as many borrowers as they could into the largest loans possible which Defendants would then sell on the secondary market at inflated values for unimaginable, ill-gotten profit (wildly surpassing the profit they would make by holding the loans), *knowing that their scheme would cause the precipitous decline in values of all homes throughout California*, including those of Plaintiffs herein.

3. Like cattle, Plaintiff-borrowers were led to slaughter by Defendants and their greed. Borrowers were intentionally placed in loans which Defendants knew Plaintiffs could not afford, and whose default they knew was a mathematical certainty. Their fraudulent inflation of real estate values throughout the State of California, the demise of which sent real estate values spiraling downwards, caused Plaintiffs to be placed in

homes that were immediately upside-down, and to instantly lose their equity – if not their homes altogether. And as a result of these two schemes coupled together, Borrowers were placed into loans far larger than would be supported by the true value of their property or their income. Then, based on these fraudulently inflated loan amounts, Defendants deceptively extracted excessive and unearned payments, points, fees, and interest from Plaintiffs. And as the final coup-de-grace, Defendants then intentionally steamrolled foreclosures upon those borrowers whose very peril was caused by Defendants' fraud in the first place, by charging grossly excessive "foreclosure fees' to line their pockets with ill-gotten profit.

4. Simply put, Defendants let their greed get in the way of fair business. Where, as here, corporate greed exceeds the extant and imperative public need for informed disclosure, the law must not sanction. This Court must recognize Defendants' duty to disclose. Without such duties, Banks are effectively granted immunity for their continued future wrongs against the borrowing public who have a right to depend on the fundamental notion of good faith and fair dealing in contractual relationships. No business, particularly one as centrally-important to the American economy as banking, should be allowed to so egregiously deceive its consumers. If Banks are to conduct business, their business *must not be* that of fraud and deception.

5. It is admitted that this Complaint alleges great harm. But Defendants should not be granted immunity on the grounds that their fraudulent scheme, which envisioned far-reaching, sweeping and inarticulable harms, succeeded in achieving just that.

6. It bears emphasizing – that the gravamen of the Complaint is not about the harm and frauds that Defendants have perpetrated on 3rd party investors, but rather the harms and frauds perpetrated upon Plaintiffs herein. The fraud described in the Complaint upon the investor, were merely the *incentive* for Defendants' fraud on Plaintiffs, and only one prong, in Defendants' brazen, intertwined and multi-pronged fraudulent scheme.

7. A fair reading of the Complaint, including reasonable inferences from the facts alleged therein, is that the concealment pertained *not only* to the commission of torts and crimes involving third parties, but also to, among other things: (1) the possession of internal reports concluding that if a Plaintiff took a loan from Defendants that Plaintiff would suffer material losses; (2) contrary to its advertising and other broadly disseminated public statements, (i) Defendants had abandoned their conventional lending business, appraisal, underwriting and lending standards and was now granting credit as part of an overall unlawful scheme based on insider trading and other frauds that Defendants knew and expected would gravely damage Defendants, the mortgage market and home values, and (ii) Defendants now provided mortgages only for the purpose of immediately reselling the mortgage at an inflated value and without regard to laws intended to protect consumers, such as the Truth in Lending Act and Patriot Act; (3) Defendants' systematic and intentional inflation of Plaintiffs' property values in order to approve them for loans which Defendants knew Plaintiffs were not qualified for and would to a certainty default; (4) undocumented domestic and foreign transfers of multiple interests in the loans and sourcing of money for the loans, without complying with laws intended to protect consumers, including the Patriot Act and Truth in Lending Act; and (5) the fact that Defendant had ceased acting as a conventional money lender and had instead morphed into a fraudulent enterprise. Such information would be highly material to a borrower's decision to enter into a contract with lenders/Defendants.

PARTIES

Plaintiffs

8. All Plaintiffs listed in the above caption are competent adults and individuals residing in the State of California, who borrowed money from one or more of the Defendants or its subsidiaries or affiliates or successors and assigns between January 1, 2003, and December 31, 2008, secured by a deed of trust on his or her California real

estate(s). At all material times hereto, one or more of the Defendants have acted as Servicer or some other control or capacity over processing the loan.

9. Based on information now available to them, fewer than 100 plaintiffs are alleging claims in amounts that would, as to them, equal or exceed the jurisdictional amount for federal jurisdiction under 28 U.S.C. § 1332(a).

10. IN ADDITION TO THE ALLEGATIONS MADE THROUGHOUT THIS COMPLAINT, WHICH APPLY TO ALL PLAINTIFFS (EXCEPT WHERE OTHERWISE NOTED), <u>APPENDIX "A"</u> ("INDIVIDUALIZED PLAINTIFF ALLEGATIONS") PROVIDES INDIVIDUALIZED ALLEGATIONS AS TO EACH AND EVERY PLAINTIFF IN THIS ACTION AND THE SPECIFIC WRONGS DONE BY EACH DEFENDANT. By this reference, Plaintiffs hereby incorporate Appendix "A" to this Complaint.

<u>Defendants</u>

11. Defendant Ally Bank, Inc. ("Ally Bank") is a multi-national bank that became a bank holding company in December 2008. The bank is headquartered in Detroit, Michigan and incorporated in the State of Utah. The bank is based at 6895 Union Park Center, Midvale, Utah, and is FDIC insured. Since August 2, 2004 it operated two main offices in the United States, one in Utah and one in Pennsylvania, and has 616 employees as of June 2009. It also has a Canadian operation, simply called Ally which operates under Resmor Trust Company, and which is Canadian Deposit Insurance Corporation insured. Ally Bank is a direct bank that markets to customers offering mortgages, savings products, certificates of deposit, online savings accounts, money market accounts and interest checking accounts. Back office operations for Ally Bank and Ally Financial are located in Charlotte, North Carolina. Ally Bank does business in the State of California.

12. Defendant Ally Financial, Inc. ("Ally"), a leading, multi-national financial services firm with a corporate office center in New York, has approximately $179 billion

of assets and operations in approximately 25 countries. Ally is the parent and sole owner of Defendants GMAC Mortgage Group, Inc. and Residential Funding Services, LLC. Prior to 2010, Ally was known as GMAC, LLC. Ally does business in the State of California.

13. Defendant GMAC Mortgage Group, Inc. ("GMACM") is a wholly- owned subsidiary and the mortgage arm of Ally. GMACM is a Delaware corporation with its principal place of business at 1100 Virginia Drive, Fort Washington, Pennsylvania 19034. GMACM transacted and is continuing to do business in the State of California.

14. Defendant Residential Capital, LLC ("ResCap") is a wholly-owned subsidiary of GMACM and originates, services, and securitizes mortgage loan in the United States, including California. ResCap was incorporated in the State of Delaware and its principal office is located at One Meridian Crossings, Minneapolis, Minnesota 55423. Prior to 2007, ResCap was known as Residential Capital Corporation. ResCap does business in the State of California.

15. Defendant GMAC-RFC Holding Company, LLC, doing business as GMAC Residential Funding Corporation ("GMAC-RFC"), is a wholly-owned subsidiary of ResCap and acquires residential mortgages and loans, which it then packages as mortgage –backed securities and sells to institutional investors. GMAC-RFC was incorporated in the State of Delaware and its principal office is located at 8400 Normandale Lake Boulevard, Minneapolis, Minnesota 55437. GMAC-RFC transacted business in California.

16. Defendant Residential Funding Company, LLC ("RFC") is a wholly-owned subsidiary of GMAC-RFC. RFC is a Delaware corporation. Prior to October 2006, RFC was known as Residential Funding Corporation. RFC was known as Sponsor of Securitization transactions which involve some of the Plaintiffs in this complaint. Defendant RFC is the parent and sole owner of Homecomings Financial, LLC ("HFN"), the originator of loans underlying some of the Plaintiffs in this complaint. Prior to 2006,

HFN was known as Homecomings Financial Network, Inc. RFC does business in the State of California.

17. Defendant Homecomings Financial, LLC ("HFN") is a wholly-owned subsidiary of RFC. HFN is a Delaware corporation and its principal office is located at 8400 Normandale Lake Boulevard, Minneapolis, Minnesota 55437. Prior to October 2006, HFN was known as Homecomings Financial Network, Inc. HFN is the originator of some of the Plaintiffs loans included in this complaint. HFN continues to do business in the State of California.

18. Defendant Executive Trustee Services, LLC ("ETS") is a wholly-owned subsidiary of ALLY. ETS was and is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Fort Washington, Pennsylvania, and doing business in the State of California and the County of Los Angeles, and has intentionally and maliciously concealed the true names of entities to which Plaintiffs' home loans were transferred by other Defendants. ETS is one of the Defendants' agents which acts as trustee under the deeds of trust securing real estate loans so as to foreclose on property securing the real estate loans held or serviced by the Defendants. The foregoing is part of a scheme by which the Defendants concealed the transferees of loans and deeds of trust, inter alia in violation of California Civil Code § 2923.5, §2934(a) and 15 U.S.C. § 1641, as more fully described herein.

19. Defendant Home Connects Lending Services, LLC ("HCLS") is a wholly – owned subsidiary of Ally. Home Connects Lending Services is a limited liability company organized and existing under the laws of the state of Pennsylvania, with its principal place of business in Fort Washington, Pennsylvania, and doing business in the State of California and the County of Los Angeles. Home Connects Lending Services, LLC is a settlement service provider for Ally and assigns and reviews all of Ally's appraisals.

20. Defendant MTC Financial Inc., doing business as Trustee Corps ("Trustee Corps"), is a California Corporation with its principal place of business in Irvine,

California, and doing business in the State of California. Plaintiff herein can allege with detailed factual specificity Trustee Corps's involvement as an essential element of Defendants' fraud in executing foreclosures which Defendants knew were wrongful and without right and intended would be unavoidable, and whose sales resulted in additional profit to Defendants, in furtherance of the Defendants' conspiracy described herein.

21. As used herein the term "ALLY DEFENDANTS" shall refer to all entities owned by Ally Financial. In other words the term "ALLY DEFENDANTS" shall refer to all Defendants in this action with the exception of MERS and MTC Financial Inc., d/b/a Trustee Corps.

22. As used herein the term "BANK DEFENDANTS" shall refer to all Defendants in this action which are all Defendants that have originated loans, namely, GMAC Bank aka Ally Bank, GMAC Mortgage, GMAC Residential Funding Corporation, Residential Funding Corporation, Homecomings Financial, LLC.

Relationship of Defendants

23. At all times material hereto, the business of Defendants was operated through a common plan and scheme designed to conceal the material facts set forth herein from Plaintiffs, from the California public, and from regulators, either directly or as successors-in-interest to other Defendants.

24. The concealment was completed, ratified and/or confirmed by each Defendant herein directly or as a successor-in-interest for another Defendant, and each Defendant performed the tortious acts set forth herein for its own monetary gain and as a part of a common plan developed and carried out with the other Defendants, or as a successor-in-interest to a Defendant that did the foregoing.

25. Plaintiffs believe and thereon allege that the agents and co-conspirators through which the named Defendants operated included, without limitation, financial institutions and other firms that originated loans on behalf of the Defendants. These

institutions acted at the behest and direction of the Defendants, or agreed to participate – knowingly or unknowingly - in the fraudulent scheme described herein.

26. Those firms originating loans that knowingly participated in the scheme are jointly and severally liable with the Defendants for their acts in devising, directing, knowingly benefitting from and ratifying the wrongful acts of the knowing participants. Upon learning the true name of such knowing participants, Plaintiffs may seek leave to amend this Complaint to identify such knowing participants as Doe Defendants.

27. For avoidance of doubt, such knowing participants include, without limitation, legal and natural persons owned in whole or in part by the Defendants or affiliates thereof; legal and natural persons owning directly or through affiliates financial interests in Defendants; legal and natural persons directly or through affiliates acting pursuant to agreements, understandings and arrangements to share in the benefits of the wrongdoing alleged in this Complaint and knowingly, to at least some degree, committing acts and omissions in support thereof; and legal and natural persons knowingly, to at least some degree, acting in concert with the Defendants.

28. As to those legal and natural persons acting in concert without an express legal relationship with Defendants or their affiliates, on information and belief, Defendants knowingly induced and encouraged the parallel acts and omissions, created circumstances permitting and authorizing the parallel acts and omissions, benefited therefrom and ratified the improper behavior, becoming jointly and severally liable therefore.

29. As to those legal and natural persons whose acts and omissions in support of the Defendants scheme were unwitting, on information and belief, Defendants knowingly induced and encouraged the acts and omissions, created circumstances permitting and authorizing the parallel acts and omissions, benefited therefrom and ratified the improper behavior, becoming liable therefore.

30. To the extent that certain Plaintiffs herein become aware of information that provides a basis for asserting the Defendants herein are liable for the origination of their

loans, those Plaintiffs reserve the right to seek leave of this Court to re-assert the appropriate claims herein.

31. The true names and capacities of the Defendants listed herein as DOES 1 through 1,000 are unknown to Plaintiffs who therefore sue these Defendants by such fictitious names. Each of the DOE Defendants was the agent of each of the other Defendants herein, named or unnamed, and thereby participated in all of the wrongdoing set forth herein. On information and belief, each such Defendant is responsible for the acts, events and concealment set forth herein and is sued for that reason. Upon learning the true names and capacities of the DOE Defendants, Plaintiffs may amend this Complaint accordingly.

32. Plaintiffs are informed and believe, and thereon allege, that: (1) the Defendants are liable for all wrongful acts of the companies which Ally acquired prior to the date thereof as the successor-in-interest to those companies; (2) Ally directly and through its subsidiaries and other agents sued herein as Does have continued the unlawful practices of the acquired companies since the dates of their acquisition, including, without limitation thereof, writing fraudulent mortgages as set forth above and concealing wrongful acts that occurred in whole or in part prior thereto, and (3) Ally and its subsidiaries are jointly and severally liable as alter egos and as a single, greater unified whole.

33. Ally's public disclosures, as reflected in its filings with the SEC, make clear that Ally considers itself both a common enterprise operating as a greater whole and without meaningful distinctions as to its operating units, and the successor to GMAC Mortgage, Homecomings, RFC and its subsidiaries.

34. More than 36 months before the filing of this Complaint, Ally completed the purchase of the assets and operations and succeeded to the businesses of various mortgage lenders. The assets of these predecessor businesses purportedly included the loans made to Plaintiffs secured by their real estate that are the subject of this action. Ally can have no greater rights in the assets of these prior businesses than their original

owners had. No transfer by any predecessor, on the one hand, to Ally, on the other hand, actually or in fact involved any rights in or to mortgages against any of the properties of Plaintiffs, for the reasons previously alleged.

35. The other Defendants followed Ally's directions because they are or were either subsidiaries of Ally, directly or indirectly owned, controlled and dominated by Ally, or because they are in an unequal economic and/or legal relationship with Ally by which they are beholden to Ally and are thereby controlled and dominated by Ally.

36. Executive Trustee Services ("ETS") involvement was an essential ingredient in Defendants' conspiracy to defraud (and to commit the other acts alleged herein) in that it was through ETS, the foreclosing trustee, that Defendants were able to force wrongful foreclosures which Defendants knew and intended would be unavoidable, and whose sales resulted in substantial additional profit to Defendants resulting from their assessment of numerous fees associated with initiating or conducting foreclosures including inspection fees, default fees, late fees, advance fees, attorney's fees, and trustee fees. In short Defendants had a motive to wrongfully initiate foreclosures because they made money by doing so through the assessment of excessive, disproportionate and unearned fees, and because Defendants were insured against the losses arising from defaults. ETS was a necessary instrument to make sure that the conspiracy of Defendants got to reap that profit. In furtherance of these acts ETS wrongfully initiated foreclosures forged recorded documents, executed assignments of deeds of trust without the authority of the previous beneficiary, and effectuated numerous other violations of California's non-judicial foreclosure laws, in order to steamroll foreclosures at the direction of Ally Defendants, and for the benefit of the conspiracy. ETS also violated numerous other laws and statutes in furtherance of this conspiracy. ETS acted intentionally, and with malice in doing these acts, for which ETS was paid by handsomely by Defendants.

37. Defendant Home Connects Lending Services, LLC ("HCLS"), Ally's Appraisal Management Company (AMC) was also a necessary and integral element of Defendants' conspiracy to carry out their fraud. As the owner, Ally exercised its vast

influence over HCLS to artificially inflate and manipulate the values of these properties, including the properties of Plaintiffs, to further its fraud and increase their profits, in furtherance of their overall conspiracy to defraud. Their purpose was twofold:

a. First, by falsely inflating said property values, investors were defrauded into believing their investments in these loans were less risky than they actually were. This in turn led to more sales and even more profits on the secondary market.
b. Second, Defendants would then turn around and use these false property valuations to induce Plaintiffs and other borrowers into entering ever-larger loans on increasingly risky terms. The result was, again, more profits

38. Hand-in-hand, and at the direction of the other Defendants, HCLS could carry out the fraud without anyone ever finding out. If the appraisals were done by independent appraisers the homeowners would have found out that the homes they were purchasing or refinancing were being over valued and that the loans they were obtaining was taking every last bit of equity out of their homes. The customer never had a choice as to the settlement providers. Ally Defendants controlled and took the choice out of the customer's hands and directed and collaborated with all their partners to systematically inflate and disgorge the homeowners of their freedom to choose and suck every last bit of equity out of their homes. In furtherance of this act they used the manipulated property valuations to seek premiums on their loans to Plaintiffs, and Secondary Market transactions. Ally Defendants not only defrauded the Plaintiffs, but the rating agencies that graded the paper being sold, the insurance companies who assessed the risk of the loans being insured through loan to valuation risk models and their investors.

39. Upon information and belief, though ETS's powers are limited to performing as a trust company, the Defendants, have regularly used ETS to foreclose, as trustee with power of sale, trust deeds on California realty and realty in other states. Such foreclosures are commonly conducted non-judicially. Such foreclosures result in the

dispossession of debtors, including certain Plaintiffs herein, and also entail the assertion in certain instances of claims for the deficiency between amounts assertedly owed and the actual sale prices. Such foreclosures are without authority.

40. Upon information and belief, ETS is acting under the direct control of Ally Defendants and is an alter ego of Ally. ETS is personally responsible for robo-signing affidavits, executing assignments, and recording of Notice of Defaults and Trustee Sale Notices which are defective and not in accordance to California Law.

41. This Complaint seeks significant relief from ETS since its conduct under the direction of Ally Defendant's and the key role that they played caused some Plaintiffs to lose their homes. Through a number of wrongful foreclosure actions they conspired with the other defendants to commit assorted violations of California's Unfair Competition Law. All of the violations done by this specific defendant were made in the State of California against California citizens.

ALLY CEASED ACTING AS A CONVENTIONAL MONEY LENDER AND INSTEAD MORPHED INTO AN ENTERPRISE ENGAGED IN SYSTEMATIC FRAUD

42. During the 1980s and 1990s, the mortgage securitization business grew rapidly, making it possible for mortgage originators to make more loans than would have been possible using only the traditional primary source of funds from deposits. During that period, Ally made loans in accordance with its stated underwriting and appraisal standards.

43. Under the traditional mortgage model, which Ally and Defendants originally subscribed to, a mortgage originator originated loans to borrowers, *held* the loans to maturity, and therefore retained the credit default risk. As such, under the traditional model, the mortgage originator had a financial incentive to ensure that (i) the borrowers had the financial ability to repay the loans, and (ii) the underlying properties had

sufficient value to enable the mortgage originator to recover its principal and interest if the borrowers defaulted on the loans.

44. Traditionally, mortgage lenders financed their mortgage business primarily using funds from depositors, retained ownership of the mortgage loans they originated, and received a direct benefit from the income flowing from the mortgages. When a lender held a mortgage through the term of the loan, it received revenue from the borrower's payments of interest and fees, and also bore the risk of loss if the borrower defaulted and the value of collateral was not sufficient to repay the loan. As a result of this "**originate to hold**" model, the lender had an economic incentive to verify the borrower's creditworthiness through prudent underwriting and to obtain an accurate appraisal of the value of the underlying property before issuing the mortgage loan.

45. With the advent of securitization, the traditional "originate to hold" model gave way to the "originate to sell" model, in which mortgage originators sold the mortgages and transferred credit risk to their investors through the issuance and sale of Mortgage Backed Securities. Securitization concurrently provided lenders like Ally with an incentive to increase the number of mortgages they issued and reduced their incentive to ensure the mortgages' credit quality.

46. With the aforementioned mandate for growth as the backdrop and incentive for their fraud, Defendants abandoned the traditional model of "**originate to hold**" and instead adopted the much more lucrative "**originate to sell**" model, and in the early 2000's Ally began to systematically disregard its stated underwriting guidelines in an effort to originate an unprecedented number of loans for securitization.

47. But to feed its investors and continue to make such never-before-seen profits, Defendants needed more borrowers. In turn, Bank Defendants began disregarding their own underwriting standards, and approving borrowers who were grossly under-qualified, in the name of getting as many loans out the door, and sold to investors for a profit, as possible.

48. In fact they *preferred* under qualified borrowers. Because Defendants had taken out insurance policies against the possibility of default, GMAC and its co-conspirators (Defendants herein) would get paid in the event of a borrower's default. In fact, in many cases, Defendants had taken out numerous redundant policies on the same property, so that when default occurred, Defendants were getting paid out multiple times – they weren't just breaking even, they were *actually turning a profit* when borrowers defaulted. In other words, Defendants had an *incentive* to place borrowers into impossible loans, because by doing so they made a lot of money.

49. Rapidly, these two intertwined schemes grew into a brazen plan to disregard underwriting standards and fraudulently inflate property values – county-by-county, city-by-city, person-by-person – in order to take business from legitimate mortgage-providers, and moved on to massive securities fraud hand-in-hand with concealment from, and deception of, Plaintiffs and other mortgagees on an unprecedented scale.

50. It is now all too clear that this was the ultimate high-stakes fraudulent investment scheme of the last decade. Couched in banking and securities jargon, the deceptive gamble with consumers' primary assets – their homes – was nothing more than a financial fraud perpetrated by Defendants and others on a scale never before seen.

51. To further this scheme, Ally, using its size and prominent market share, began systematically creating false and inflated property appraisals throughout California, hand-in-hand with the other Defendants herein, namely HCLS. The purpose was twofold:

a. First, by falsely inflating said property values, investors were defrauded into believing their investments in these loans were less risky than they actually were. This in turn led to more sales and even more profits on the secondary market.
b. Second, Defendants would then turn around and use these false property valuations to induce Plaintiffs and other borrowers into entering ever-larger loans on increasingly risky terms.

52. In a scathing complaint filed by the Federal Housing Finance Agency on September 2, 2011 they outlined how this brazen planned worked. Ally would use their in-house or contract appraisers at Home Connects Lending Services to artificially inflate Plaintiff's home values in order for their loans to be used in Securitization transactions. According to that complaint, "an inflated appraisal will understate, sometimes greatly, the credit risk associated with a given loan", mainly our Plaintiffs' homes.

53. These inaccuracies with respect to their Loan-to-Values ratios also indicate that the representations that were made to them were false and that at Ally's direction appraisal practices were unsound. Ally and their affiliates furnished appraisals to the Plaintiff's that they understood were inaccurate and that they knew bore no reasonable relationship to the actual value of the underlying properties.

54. According to the Financial Crisis Inquiry Commission (FCIC), they identified "inflated appraisals" as a pervasive problem at Ally during the period of the Securitizations in the time span mentioned in this complaint, and determined through its investigation that appraisers were often pressured by mortgage originators, among others, to "produce inflated results".

55. From as early as 2005, Ally's senior management ***knew*** the scheme would cause a liquidity crisis that would devastate Plaintiffs' home values and net worths. But, they didn't care, because their plan was based on insider trading – pumping for as long as they could and then dumping before the truth came out and Plaintiffs' losses were locked in.

56. Defendants, and each of them, wrongfully acted and continue to act as if they are either the owner, beneficiary, successor, assignee or servicer, or have some other right, title, or interest in Plaintiffs' notes and deeds of trust, when, in reality, they have no basis to assert any such right, title or interest.

57. This action seeks remedies for the foregoing improper activities, including a massive fraud perpetrated upon Plaintiffs and other borrowers by the Defendants'

business that devastated the values of their residences, in most cases resulting in Plaintiffs' loss of all or substantially all of their net worth.

58. The Defendants' business premise (although concealed from the Plaintiffs) was to leave the borrowers, including Plaintiffs, holding the bag as the Defendants used the Plaintiffs and other borrowers as pawns in massive securities games and fodder to feed its fraud on investors perpetrated on a global scale. This massive fraudulent scheme was a disaster both foreseen by the Defendants and waiting to happen. Defendants knew it, and yet Defendants still induced the Plaintiffs into their scheme without telling them. In fact, had the Plaintiffs been aware of the true facts which the Defendants concealed and failed to disclose, they would not have entered into these transactions.

59. At the very least, at the time of entering into the notes and deeds of trust referenced herein with respect to each Plaintiff, the Defendants were bound and obligated to fully and accurately disclose to each borrower, including each Plaintiff herein, that the loan and mortgage being offered to the Plaintiff was, in fact, part of a massive fraud that the Defendants knew would result in the loss of the equity invested by each Plaintiff in his or her home, the severe impairment of each Plaintiff's credit rating, and the other damages described in this Complaint

60. Since the homes of Plaintiffs herein were Ally's main target, this scheme led directly to a mortgage meltdown for Plaintiffs in this complaint that was substantially worse than any economic problems facing Defendants' borrowers in the rest of the United States.

61. As a result of Defendants' improper scheme, Plaintiffs lost their equity in their homes, their credit ratings and histories were damaged or destroyed, and Plaintiffs incurred material other costs and expenses, described herein. At the same time, Defendants took from Plaintiffs and other borrowers billions of dollars in interest payments and fees and generated billions of dollars in illegal and fraudulently obtained profits by selling their loans at inflated values and using the loans as collateral for fraudulent swaps.

62. Further as a result of Defendant's (1) artificial and fraudulent inflation of Plaintiffs' property values, and property values throughout the State of California, as well as (2) Defendants' abandonment of their own as well as industry standard underwriting guidelines, coupled with (3) Defendants incentive to package and sell as many dollars' worth of loans as they could to the secondary market, Defendants placed Plaintiff-borrowers into loans which were considerably larger than were justified by (a) the *true* uninflated valued of their properties, (b) Plaintiffs true uninflated incomes and (c)by Defendants own underwriting guidelines. As a result of Plaintiffs were placed into larger loans than they could afford or should have been placed into. The additional fees, points and interests paid as a result of the higher/inflated loan amounts constitute damages, and legally cognizable sources of restitution.

63. Further, Defendants either directly or through their subsidiaries, including ETS, often charged fees associated with initiating or conducting the foreclosures resulting from their fraudulent lending including inspection fees, default fees, late fees, advance fees, attorney fees, and trustee fees. In short, Defendants made money by wrongfully initiating foreclosures against Plaintiffs herein. The award of damages or restitution for these unmerited fees obtained through deceit is proper.

The Fraudulent Appraisal Process

64. An accurate appraisal performed pursuant to a legitimate appraisal process is critical to calculating the loan-to-value ("LTV") ratio, a financial metric commonly used to evaluate the risk associated with a mortgage, and which would also be used as part of the valuation of a Mortgage Backed Security (which were sold on the secondary market for profit). The LTV ratio expresses the amount of the mortgage or loan as a percentage of the appraised value of the collateral property. For example, if a borrower seeks to borrow $90,000 to purchase a home appraised for $100,000, the LTV ratio would be $90,000 divided by $100,000, or 90% - which was viewed in the industry as a risky loan. Typically any loan over 80% LTV was considered risky, and would require the purchase

of "Mortgage Insurance" to insure against the additional risk associated with such high LTV loans. The idea being that a high LTV means that a borrower has invested little of his own money in the property, and is thus more likely to walk away from the property when things get tough. Now imagine the above scenario with a slight modification - instead of the above property being appraised at $100,000 dollars, the appraisal was manipulated to reflect that the home was instead $112,500, now the Loan-to-Value ratio would appear as a much safer, and less risky 80% LTV ($90,000 Loan divided by $112,500 property value = 80%).

65. From an **investor's perspective**, a high LTV ratio represents a greater risk of default on the loan, which means they are unwilling to pay as much for that loan as they would one which was less risky. This is true for a number of reasons. First borrowers with a small equity position in the underlying property have "less to lose" in the event of default. Second, even a slight drop in housing prices might cause a loan with a high LTV ratio to exceed the value of the underlying collateral, which might cause the borrower to default and would prevent the issuing trust recouping its expected return in the case of foreclosure and subsequent sale of the property.

66. From the **Defendant bank's perspective**, because of their shift from the "originate to hold" model to the "originate to sell" model, Defendant was incentivized to enter into as many loans as possible to sell on to the secondary market for profit. Because they weren't holding these loans anymore, Defendants held no risk – they had no reason to ensure that the borrower was adequately qualified, or more importantly, in the context of *this* discussion, that the property had sufficient value, because Defendants immediately turned around and sold that loan. Here's where things take a turn for the worst – because investors were willing to pay more for less risky loans (lower LTV loans), Defendants were given an incentive to fraudulently inflate the appraisal values of their property, thus making the collateral (the subject property) of the loan seem safer to the investor, and thus more valuable to them. More value to the investors means more money in Defendants pockets. And so it began, Defendants quickly embarked on a scheme to

inflate their appraisals, and more broadly, property values throughout the State of California, because, in short, they made a *lot more money by doing so*.

67. At Ally Defendants' behest, and at their direction, Home Connects Lending Services began systematically inflating the valuations they rendered upon the subject properties of each loan, including the loans of Plaintiffs herein. As is common knowledge in the real estate industry, appraisers take the value of other nearby homes (called comparables aka "comps") into account in determining the value of the homes they appraise. **These inflated appraisals and home valuation conducted by Ally and HCLS *then* acted as comps upon which numerous *other* appraisers based their valuations of *other* homes. The results were a vicious self-feeding exponential cycle, both expected and intended by Defendants. Ally's inflated appraisals caused other homes to be valued for more than they were worth, which in turn acted as the predicate for even higher appraisals and which caused even more homes to be valued for more than they were worth**. The inevitable and intended result of Defendants' conspiracy was the creation of a super-heated pricing bubble in the real estate economy, created by and at the direction of Defendants, designed to manipulate and inflate property values, and effectuated for the sole purpose of lining Ally's (and other Defendants') pockets with money. The harm it inflicted to Plaintiffs herein, California's real estate economy, and more broadly, the American economy mattered little. Defendants were making money and plenty of it.

Defendants had another reason for driving the prices of real estate up – by doing so Defendants created the illusion of a naturally appreciating real economy, which resulted in a purchase *and* refinance boom – which meant more loans for Defendants, and thus more money.

68. From the **Borrower's perspective** (Plaintiffs herein), the harm was five-fold:

a. The hyper-inflated property values intended and caused Plaintiffs to pay more for their homes (or to refinance their homes for more) than they

were truly worth. When the market corrected itself, Plaintiffs immediately suffered a substantial loss of equity.

b. The hyper-inflated property values also caused Plaintiffs to pay substantially higher property taxes.

c. Defendants also used these inflated values, to induce Plaintiffs and other borrowers into entering ever-larger loans on increasingly risky terms. The result was more money for Defendants.

d. With the inflated property values as their predicate, Defendants placed Plaintiffs into inflated loan amounts, unjustified by the true *uninflated* value of Plaintiffs' property. Defendants used these intentionally inflated loan amounts to charge Plaintiffs even more interest, points and fees, than would have been proper under the terms of a non-inflated loan value. The result was, shockingly, even more money for Defendants.

e. The resultant higher payments coupled with the housing crash (both known if not intended by Defendants) resulted in Plaintiffs' inevitable default, wreaking havoc with their credit, and upon which Defendants charged a host of excessive fees (trustee fees, default fees, cleanup fees, inspection fees, late fees, advance fees, and attorney fees) all of which were marked up dramatically. In short, Defendants couldn't lose; they were making money no matter what, and were benefitting from Plaintiffs' default. By tossing on so many fees Defendants made it impossible for Plaintiffs to be able to ever pay off their "default" amounts. Why? Because Defendants made money by doing so. By making it impossible for Plaintiffs to pay off their unilaterally imposed default amounts, Defendants could come in and scoop up whatever equity Plaintiffs had left in the property. It was a win win win scenario.

69. Many mortgage loan originators, including Ally and Defendants herein, allowed the sales personnel or account executives to order and control the appraisal

process. These personnel were typically on a commission-only pay structure and were therefore motivated to close as many loans as possible. These sales personnel and account executives would pressure appraisers to appraise properties at artificially high levels or they would not be hired again, and were afforded the ability to do so by the very policies and procedures explicitly set forth by Ally and Defendants. According to the April 7, 2010 FCIC testimony of Richard Bitner, a former executive of a subprime mortgage originator for 15 years and the author of the book *Confessions of a Subprime Lender*, "the appraisal process [was] highly susceptible to manipulation, lenders had to conduct business as though the broker and appraiser couldn't be trusted, [and] either the majority of appraisers were incompetent or they were influenced by brokers to increase the value." He continued:

> To put things in perspective, during my company's history, half of all the loans we underwrote were overvalued by as much as 10%. This means one out of two appraisals were still within an acceptable tolerance for our end investors. Our experiences showed that 10% was the most an appraisal could be overvalued and still be purchased by investors. Another quarter that we reviewed were overvalued by 11-20%. These loans were either declined or we reduced the property to an acceptable tolerance level. The remaining 25% of appraisals that we initially underwrote were so overvalued they defied all logic. *Throwing a dart at a board while blindfolded would've produced more accurate results*

70.Mr. Bitner testified about the implications of inflated appraisals:

> **If multiple properties in an area are overvalued by 10%, they become comparable sales for future appraisals. The process then repeats itself.** We saw it on several occasions. We'd close a loan in January, and see the subject property show up as a comparable sale in the same neighborhood six months later. Except this time, the new subject property, which was nearly identical in size and style to the home we financed in January, was being appraised for 10% more. Of course, demand is a key component to driving value, but the defective nature of the appraisal process served as an accelerant.

71. Mr. Bitner testified that the engine behind the increased malfeasance was the Wall Street Banks: "[T]he demand from Wall Street investment banks to feed the securitization machines coupled with an erosion in credit standards led the industry to drive itself off the proverbial cliff."

72. Alan Hummel, Chair of the Appraisal Institute, testified before the Senate Committee on banking that the dynamic between mortgage originators and appraisers created a "terrible conflict of interest" where appraiser "experience[d] systemic problems of coercion" and were "ordered to doctor their reports" or they might be "placed on exclusionary or 'do-not-use' lists." Too often, this pressure succeeded in generating artificially high appraisals and appraisals being doing on a "drive-by" basis which appraisers issued their appraisal without reasonable bases for doing so.

73. A 2007 survey of 1,200 appraisers conducted by October Research Corp., which publishes *Valuation Review* , found that 90% of appraisers reported that mortgage brokers and others pressured them to raise property valuations to enable deals to go through. This figure was nearly double the findings of a similar study conducted just three years earlier. The 2007 study also "found that 75% of appraisers reported 'negative ramifications' if they did not cooperate, alter their appraisal, and provide a higher valuation."

74. Because HCLS was owned by Ally, Ally and Defendants herein directed HCLS as their alter ego to provide the results requested, or engaged in a practice of pressuring and intimidating appraisers into using appraisal techniques that met Ally and Defendants' business objectives even if the use of such appraisal technique was improper and in violation of industry standards. Ally black-listed appraisers who did not provide appraisal reports with Ally's expectations.

75. This coercion to fraudulently inflate appraisal values was particularly rampant in the context of refinance transactions. When a property didn't appraise for a high enough value, a deal wouldn't "go through." This meant that (1) the loan consultant on the transaction wouldn't get a commission, (2) the Area Divisions (sometimes referred

to as "Home Loan Centers" – often comprised of hundreds of loan consultants over several cities, and managed by a single manager) which were paid handsomely for each funded loan wouldn't get paid, and (3) Defendants wouldn't be able to sell the loan on the secondary market for profit. Nobody made money. However, the system was set up to allow coercion, bribery, and undue influence over the appraisers. Loan consultants would contact appraiser and direct them specifically as to what value was "needed" to make the deal go through, some even going so far as to give gifts to the appraisers, and many were given outright bribes. Area Division managers who also had a financial incentive as mentioned earlier, would exercise undue influence and contact appraisers and demand certain values from them, abolishing the exercise of independent thought necessary to render an accurate/good faith appraisals. The same Area Division Managers, because of their power and influence within the company, would even go so far as to call the appraisal group's *managers* and request (read "demand") an appraisal to come in at a certain value, or if that appraisal had already been rendered and it was too low, would request the appraisal value to be "bumped" or increased. The Area Division Managers who often had personal or friendly relationships with the Appraisal *managers* would coerce, bribe or influence, give gifts to or "call in favors" from the Appraisal managers to ensure that the appraised value of the subject property was high enough to make the deal "go through," so that all parties could make their money. The Appraisal managers obliged.

76. On other occasions appraisers and/or their managers would be instructed to use overvalued, inflated or out-of-area comps from non-comparable *superior* properties in valuating the subject property for the purpose of arriving at a higher value than would be supported by nearby or appropriate comps. Defendants intended this to artificially inflate the appraised value of the subject property.

77. On the rare occasion when a loan consultant's or Area Division Manager's influence didn't get the appraiser to inflate the value of the appraisal by a sufficient amount, Defendants' policies gave them another, more effective way to fraudulently

inflate the amount – they were allowed to hire an *outside appraiser*. It was well known in the industry that outside appraisers would deliver an appraisal in the amount they were told to deliver. Why? Because they were being paid directly by the loan consultant, or the Area Division Manager. In other words, loan consultants and Area Division Manager's had outside appraisers "in their pockets." Outside appraisers would deliver the results (meaning inflated values) they were expected to deliver for two reasons: (1) In the interest of keeping the client happy and hopefully earning future business and (2) for fear of not getting paid on their individual deal if they didn't deliver the results they were expected to deliver. This procedure (allowing the hiring of easily-influenced outside appraises) was explicitly made part of Defendants' own policies, and its use was encouraged by Defendants, as well as their mid-level and upper management.

78. This coercion and influence even existed from the top down – Regional Managers (in charge of entire portions of the country, several states large) would also call in favors and demand appraised values to be inflated or changed to make deals happen in the interest of making money. This pattern was not only tolerated by Defendants, but ratified and encouraged by them, because more funded loans meant more money for Defendants (who as described above, held none of the risk). In fact, Defendants had intentionally set up the appraisal system in such a way as to allow for the exercise of influence over appraisals and the appraisal departments. This influence was intended and foreseen.

79. In short, Defendants intentionally designed an appraisal system which they could manipulate through influence and coercion to further their own ends – namely, profit. By its very design, the independence of thought necessary for a professional appraiser to render a good faith opinion was decimated. (1) Defendants *owned* the very appraisal company which was supposed to render independent appraisals. Then, (2) Defendants through its explicit (as well as unwritten) policies and procedures, intentionally allowed their own employees who made commission/money as a function of every funded loan (managers, loan consultants, etc.), to contact individual appraisers

and bribe, exercise influence, call in favors, harass, and coerce appraisers into rendering the exact value they needed. And finally, when all else failed (3) Defendants set up a fail-safe; they created an internal policy which allowed for the hiring of "outside" appraisers who were particularly well known within the industry for being willing to "fudge" the numbers.

80. Moreover, as HCLS was Ally's wholly owned subsidiary, HCLS was specifically directed by Defendants to systematically "bump" or inflate appraisal values of homes throughout California, with the intent of creating housing appreciation, leading to a real estate boom, which Defendants could then capitalize on by selling not only more loans, but more loans at even higher loan amounts. From the very top to the very bottom, Defendants created a system intended to render consistently inflated appraisals. But they knew the 'boom' they were creating, was one stilted up and fueled by their fraud – and that when the music stopped playing the house of cards they'd built would come crumbling down destroying any and all equity Plaintiff borrowers had in their home.

81. These artificially inflated appraisal reports and values were then used by homeowners and real estate agents alike in setting sales prices for their homes, resulting in artificially inflated sales, both known and intended by Defendants. Defendants told their borrowers that the value their property appraised for was the true value of their property. Furthermore, Defendants went so far as to furnish the appraisal reports to many of their borrowers, including Plaintiffs herein. **The result was a vicious exponential cycle. The artificially inflated sales would act as comps, inflating the sales prices of other homes. The cycle would repeat.** And Defendants intended it to repeat because it perpetuated an inflationary real estate economy in California, which resulted in massive profit to the Defendant Banks.

82. Ally and Defendant conspirators perpetrated this systematic appraisal fraud at the direction of the conspiracy, and with the knowledge and acquiescence of their executives and board members.

83. .To carry out this fraud, GMAC, hand-in-hand with the other Defendants herein, used its size and market share as one of the largest lenders in California to systematically create false and inflated property appraisals throughout California, through its wholly-owned subsidiary HOME CONNECTS LENDING SERVICES, LLC. (HOME CONNECTS LENDING SERVICES, LLC is a division of Defendant Ally Bank – hereinafter "HCLS")

<u>Defendants' Scheme to Fix the Market</u>

<u>Through Their Wholly-Owned Appraisal Subsidiary: HCLS</u>

84. HCLS was created in 1999 as a GMAC brainchild. GMAC figured that if they could control all of the settlement service providers, including appraisers, it would make it easier for Ally Defendants to carry out this fraud. Any borrower, broker or lender that chose to conduct business with GMAC was forced to use their settlement service providers as a standard course of business. If a broker submitted a loan, the appraisal was to be done by someone on the HCLS approved appraiser list. The homeowners were also required to pay for a secondary appraisal review through HCLS. Since there were two appraisals that were done on each property the aggregator being ResCap was now able to choose which appraisal would suit them best for their multiple transactions. The homeowners would be disclosed one value and the secondary appraisal done by HCLS could be used for Secondary Market purposes.

85. As the owner, GMAC exercised its vast influence over HCLS to artificially inflate and manipulate the values of these properties, including the properties of Plaintiffs, to further its fraud and increase their profits. Their purpose was two-fold:

a. First, by falsely inflating said property values, investors were defrauded into believing their investments in these loans were less risky than they actually were. This in turn led to more sales and even more profits on the secondary market.
b. Second, Defendants would then turn around and use these false property

valuations to induce Plaintiffs and other borrowers into entering ever-larger loans on increasingly risky terms. The result was, again, more profits.

86. Furthering this scheme, GMAC & Homecomings Financial then struck sweetheart deals with some of the Nation's largest homebuilders in which they collaborated to artificially inflate the values of the properties being built and through a joint venture. Some of the largest homebuilders such as Lennar Homes. The unsuspecting homeowners would be forced to pre-qualify through the builders so called "In-House Lender" and they would be incentivized with offers of free upgrades or credits towards their closing costs only to be overcharged for these loans and artificially inflated purchase price that would cover the incentives. Since GMAC was the in house lender they could easily manipulate the value of the homes since their own appraisers would be appraising the properties, and in fact, they did just that.

87. Hand-in-hand with their builders and HCLS companies, Defendants could carry out the fraud without anyone ever finding out. If the appraisals were done by independent appraisers the homeowners would have found out that the homes they were purchasing or refinancing were being over valued and that the loans they were obtaining was taking every last bit of equity out of their homes. The customer never had a choice as to the settlement providers. Ally Defendants controlled and took the choice out of the customer's hands and directed and collaborated with all their partners to systematically inflate and disgorge the homeowners of their freedom to choose and suck every last bit of equity out of their homes. In furtherance of this act they used the manipulated property valuations to seek premiums on Secondary Market transactions. Ally Defendants not only defrauded the Plaintiffs, but the rating agencies that graded the paper being sold, the insurance companies who assessed the risk of the loans being insured through loan to valuation risk models and their investors.

88. From as early as 2004, GMAC's senior management, and Ally Defendants ***knew*** the scheme would cause a liquidity crisis that would devastate Plaintiffs' home

values and net worths. But, they did not care, because their plan was based on insider trading – pumping for as long as they could and then dumping before the truth came out and Plaintiffs' losses were locked in.

89. These acts are now subject of numerous complaints and very large scale litigations and settlements. The largest recently announced lawsuit was filed by the Federal Housing Finance Agency as Conservator for Freddie Mac. The complaint alleges that Ally Defendants furnished appraisals that they understood were inaccurate and that they knew bore no reasonable relationship to the actual value of the underlying properties. Some of Plaintiffs loans seeking relief in this complaint are part of these REMIC's as mentioned in the FHFA complaint.

Defendants Systematically Abused and Abandoned Their Underwriting Guidelines to Place Unqualified Borrowers into Loans They Could Never Afford

90. As mentioned above, however, Defendants' fraud was multipronged. To feed its investors and continue to make such never-before-seen profits, Defendants needed more borrowers. In turn, Defendants Banks systematically and intentionally began disregarding their own underwriting standards, and approving borrowers who were grossly under-qualified, in the name of getting as many loans out the door, and sold to investors for a profit, as possible.

91. In other words, not only did Defendants inflate appraisal values in the name of making the loans appear safer to investors, and thus more profitable to the banks, but Defendants also abandoned their own underwriting guidelines to approve more and more borrowers for loans. In doing so, Defendants intentionally placed borrowers into loans which would imperil their entire livelihoods, and often cases into loans whose default was an absolute mathematical certainty. The result was, once again, more profit obtained through deception.

92. To achieve their fraud, Defendant Banks intentionally and grossly falsified Plaintiffs' salary, income, bank accounts, liquid assets, non-liquid assets, employment, real estate owned values, rental income ad infinitum, and by doing so simultaneously achieved two goals. First, they were able to approve borrowers who could never have been approved under their own published conventional underwriting guidelines (as well as industry standard underwriting guidelines used throughout the United States.) Second, they were able to conceal from the investor the highly risk nature of the loan, which resulted in more profit to the Bank. Investors were willing to pay more money for less risky loans. The translation is that Defendants had every incentive to deceive borrowers into entering loans which they realistically could never afford. The result was that Defendants turned unimaginable ill-gotten profit, *at the sole expense of their borrowers*. When the music stopped, only the borrowers were left without a chair.

93. In fact, Defendants intentionally put mechanisms and programs in place to allow their own employee's/Loan Consultants/Loan Representatives to **falsify** the income, asset and other material information of their borrowers, without a borrower ever knowing that their income or assets had been inflated. One such program was called the **"Stated Income"** program. Under this program, Defendant Banks would take as true any income stated on the application, without requesting any documentation in support. Seizing this unbridled free-for-all, Defendants' own employees who were paid commission based on the number and size of loans they got approved, rampantly falsified material income and asset information of their borrowers. By doing so they were paid more commission. But more importantly, Defendant Banks themselves created more products to be sold on the secondary market for even more profit. In other words, Defendants intentionally put policies and programs into motion which would allow it to place unqualified borrowers into loans – all while maintaining the semblance of propriety, and all without ever having to disclose to their investors that the incomes listed on their loan applications were false.

94. Numerous others similar programs were also adopted such as **"stated assets"**, and **"low documentation loans".** Both of which allowed Defendants to falsify information, and get loans approved which would never been approved under traditional documentation

95. Even in the absence of these programs Defendants and their employees nevertheless had the ability to and did, falsify their borrower's income and assets through numerous other means. For example, Defendants would inflate a borrower's income by making it appear as though the borrower was earning rental income on of their other properties when in fact they were earning none. To legitimatize this false income, Defendants would add insult to injury by manufacturing an entirely false rental agreement, showing the false monthly rental income, complete with the forged signature of a non-existent renter.

96. Defendants *regularly* inflated borrowers' incomes by over 50% and on many occasions by as much as a mind-numbing 300%. An egregious number by any measure.

97. Defendants were intentionally turning a blind-eye to the rampant and egregious manipulations of incomes by their own employees, through policies and programs intentionally set forth by Defendants' very own top executives to achieve *just such a result.* The result was that Defendant were able to originate loans which they knew were false, and they intended to be false, but without ever having to *admit* to their secondary market investors that the loans were, in fact, false.

98. Defendant banks knew and intended that their employees would falsify this information, for the very reasons set forth above, and in fact incentivized them through their commission and reward structure to do so. In other words Defendants intended that this program would be abused. And by doing so, Defendants allowed and intended for their borrowers to be placed into loans which the borrowers had no chance of being able to afford had their true income/asset information been used. .

99. Defendants then told their borrowers, and Plaintiffs herein, that a determination by the Bank that they were "*qualified*" for a loan meant that the borrowers would be able to "*afford*" their loan

100. Because Defendants held themselves out as (1) experienced professionals (2) with superior knowledge, education, and expertise, (3) a bank their customers and borrowers could trust and rely on Borrower plaintiffs believed them, and justifiably so. (See Ally's ads - "We make money with you, not off you": http://www.businessinsider.com/ally-bank-print-ad). Borrower Plaintiffs were deceived into reposing trust into the very company who would defraud them.

101. For the purposes of the following paragraphs it is important to define two key terms: **"front-end"** debt to income ratio, and **"back end"** debt to income ratio.

102. A **"front end"** debt to income ratio compares ONLY the loan payment (as well as taxes and insurance) to a person's income, and does not take into account any other debt whatsoever. For example a person who makes $10,000 per month, and whose mortgage costs $3,000 per month (including tax and interest), has a "front end" debt to income ratio of 30%.

103. A **"back end"** debt to income ratio, by contrast, takes into account not only a person's loan payment (as well as taxes and insurance) but also *all other* debt reflected on their credit report. If that same person used in the example above, also had an additional $4,000 in monthly expenses such as credit card debt, car loans/payments, other mortgages, student debt, etc. etc., then that person's "back end" ratio would be 70%. ($3,000 per month for her loan, taxes & insurance plus, $4,000 per month for other debts = $7,000 per month in debt. $7,000 of debt divided by $10,000 in monthly income equals, 70% "back end" debt to income ratio).

104. Industry Standard and Conventional Underwriting guidelines, including those used by Defendants herein, required that loans with a "front end" debt to income ratio higher than **35%** be rejected. They also required that loans with a "back end" debt to income ratio of higher than **45%** be rejected – and that 45% figure was on the on the

very high end. For a loan with a 45% "back end" debt to income ratio to be approved, a borrower had to have excellent credentials in all other areas such as 720+ median credit score and high liquid asset reserves totaling more than 12 months of their).

105. However, Defendants in this action regularly approved loans with front end ratios wildly exceeding 35% (and back end ratios wildly exceeding 45%) on a regular basis, and as a matter of course, in violation of their own published underwriting guidelines as well industry standard underwriting guidelines used throughout the banking industry.

106. In many cases, borrowers were approved with front-end debt to income ratios at almost 100%. In other words, borrowers were being approved for mortgages, where after spending almost every penny of their monthly income, they would have almost nothing left over to pay for the myriad other life expenses such as electricity, gas, car payments, telephone, insurance, medicine, or even food.

Defendants Turned Substantial Profits Through Their Borrowers' Default Furthering Their Incentive to Intentionally Place Plaintiffs Into Impossible and Unaffordable Loans

107. Not only did Defendants approve under qualified borrowers – they preferred them. That's because a defaulting borrower meant profit for Defendants.

108. All of the Defendants managed risk through leverage and derivatives trading. With the advent of "Credit Default Swaps" ("CDS"), they had the protection they needed to push these loans out the door to grossly under qualified borrowers, without any fear of loss whatsoever. The CDS gave defendants *another* incentive to give grossly under qualified borrowers – whose default was virtually certain. Not only (1) were Defendants incentivized to give loans to unqualified borrowers because they were turning other-worldly profit by selling as many loans on the secondary market as possible, *but also* ... (see next paragraph).

109. (2) Because Defendants had taken out these insurance policies – aka Credit Default Swaps - against the possibility of default, GMAC and its co-conspirators (Defendants herein) would get paid in the event of a borrower's default. In fact, in many cases, Defendants had taken out numerous redundant Credit Default Swaps and insurance policies out on the same property, so that when default occurred, Defendants were getting paid out multiple times – they weren't just breaking even, they were *actually turning a profit* when borrowers defaulted. In other words, Defendants had an *incentive* to place borrowers into impossible loans, because by doing so they made a lot of money.

110. This technique gave these Defendants the insurance they needed to pass the risk along to third party without taking the risk themselves. Since they planned on securitizing all of their loans and not keeping any of them, the Defendants could not care less about quality or who they hurt. They would push insurance on the investors and actually over insure the loan pools, at times betting that the Plaintiffs and other borrowers would default.

111. Since the Defendants created these pools to begin with, they were fully aware of the lack of quality and lack of due diligence that went into setting up these pools. These "swaps" are life insurance policies that are placed on Plaintiffs' loans. If the loan dies, the Defendants get paid.

112. These swaps have been considered to be so dangerous that the majority of the financial world has simply stayed away. They are best described by the following prominent experts:

a. Nobel prize-winning economist George Akerlof predicted that CDS would cause the next meltdown;
b. Warren Buffett called them "weapons of mass destruction";
c. Warren Buffett's colleague, Charles T. Munger, has called the CDS prohibition the best solution, and said "it isn't as though the economic world didn't function quite well without it, and it isn't as though what has

happened has been so wonderfully desirable that we should logically want more of it;"

d. Former Federal Reserve Chairman Alan Greenspan says CDS are dangerous;
e. Newsweek called CDS "The Monster that Ate Wall Street"
f. President Obama said in a June 17 speech on his plans for finance industry regulatory reform that credit swaps and other derivatives "**have threatened the entire financial system;**"
g. In a February 9th, 2012 speech, President Obama scolded "irresponsible" and "reckless" lenders, who "sold homes to people who couldn't afford them". He continued:

> It's well known that millions of Americans who did the right thing and the responsible thing -- shopped for a house, secured a mortgage that they could afford, made their payments on time -- were, nevertheless, hurt badly by the irresponsible actions of others: by lenders who sold loans to people who couldn't afford them; ... by banks that took risky mortgages, packaged them up, and traded them for large profits.
> ...
> It was wrong and it cost more than 4 million families their homes to foreclosure"
> ...
> Even worse, many companies that handled these foreclosures didn't give people a fighting chance to hold onto their homes. In many cases, they didn't even verify that these foreclosures were actually legitimate. Some of the people they hired to process foreclosures used fake signatures to -- on fake documents to speed up the foreclosure process. Some of them didn't read what they were signing at all.
> ...
> The mortgage fraud task force I announced in my State of the Union address retains its full authority to aggressively investigate the packaging and selling of risky mortgages **that led to this crisis**

h. George Soros says the market is still unsafe, and that credit- default swaps are "toxic" and "a very dangerous derivative" because it's easier and

potentially more profitable for investors to bet against companies by purchasing swaps rather than shorting their publicly traded stocks.

113. But insurance against default wasn't the only way Defendants made money from the losses of their imperiled borrowers. Defendant banks also made money by charging a litany of unearned and egregiously marked up fees associated with the initiation of and conducting (their own wrongful) foreclosures including: inspection fees, default fees, late fees, advance fees, attorney's fees, and trustee fees. In short Defendants had an incentive *to place Plaintiff borrowers into loans they knew their borrowers could not afford* because by doing so, the bank would turn a profit. Not only that, but Defendants had an incentive *to wrongfully initiate foreclosures* because they made money by doing so through the assessment of excessive, disproportionate and unearned fees.

<u>Defendants Misled the Public – Including Plaintiffs</u>

114. The Defendants concealed and did not accurately or fully disclose to any Plaintiff herein any of the foregoing facts. Further, Defendants did not disclose or explain their scheme to Plaintiffs at any time. They did the foregoing with the intent to deceive Plaintiffs and the investing public. Plaintiffs did not know the massive scheme Defendants had devised.

115. To the contrary, Defendants affirmatively misrepresented its underwriting processes, the value of its mortgages and the fundamental nature of its business model in its press releases, annual report and securities filings, all of which were widely distributed to the public, including Plaintiffs. Defendants intended the public, including Plaintiffs, to rely upon its misrepresentations and made those misrepresentations to create false confidence in Defendants and to further its fraud on borrowers and investors.

116. Plaintiffs would never have done business with the Defendants if Defendants had disclosed their scheme. Had the Plaintiffs known the facts concealed from them by Defendants, Plaintiffs would have never entered into bogus and predatory transactions

with the Defendants designed only to line the pockets of Defendants and their executives and not to actually and justifiably create value and generate capital from the Plaintiffs' equity investments in their primary residences.

117. If the Plaintiffs had later learned the truth, each Plaintiff would have either (1) rescinded the loan transaction under applicable law and/or (2) refinanced the loan transaction with a reputable institution prior to the decline in mortgage values in late 2008. Instead, each Plaintiff reasonably relied on the deceptions of the Defendants in originating their loans and forbearing from exercising their rights to rescind or refinance their loans.

118. After entering into the transactions with each Plaintiff herein as alleged herein, the Defendants sold in securities transactions the notes and deeds of trust pertaining to Plaintiffs' properties. The sales:

a. Involved misrepresentations by Defendants to investors and concealment from investors of Plaintiff's true financial condition and the true value of Plaintiff's home and mortgage;
b. Involved misrepresentations by Defendants to investors and concealment from investors of the true financial condition of other borrowers and the true value of their homes and mortgages also included in the pools;
c. Were for consideration greater than the actual value of the said notes and deeds of trust;
d. Were for consideration greater than the income stream that could be generated from the instruments even assuming a 0% default rate thereon; and
e. Were part of schemes by which the Defendants bilked investors by selling collateralized mortgage pools at an inflated value and used the notes and mortgages as collateral for fraudulent swaps, all the while using Plaintiffs as the fodder for Defendants' fraudulent schemes.

119. Defendants hid from Plaintiffs that Defendants were engaged in an effort to increase market share and sustain revenue generation through unprecedented expansions of its underwriting guidelines, taking on ever-increasing credit risk.

120. At the time the Defendants induced Plaintiffs to enter into mortgages, they knew their scheme would lead to a liquidity crisis and grave damage to each Plaintiff's property value and thereby result in each Plaintiff's loss of the equity such Plaintiff invested in his or her house, as well as damaging that Plaintiff's credit rating, thereby causing the Plaintiff additional severe financial damage consisting of the foregoing damages and damages described elsewhere in this Complaint. The Defendants concealed the foregoing from Plaintiffs, and California consumers and regulators.

121. Based upon the Defendants' (1)long term media campaign holding themselves out as a trustworthy and reputable lending institution, (2) position as leading financial institutions,(3)Defendants' expertise, highly specialized training, unique understanding of the highly complicated terms and mathematics of financing as well as Defendant Banks' capacity as an advisor, in addition to their (4) intentionally misleading and/or partially true statements found in omissions, including in their securities filings, numerous documents, advertisements and other media, statements made by their employees and agents with apparent and/or actual authority and their publicly available underwriting guidelines the Plaintiffs reasonably relied upon the statements and omissions made by Defendants and reasonably relied that no material information necessary to their decisions would be withheld or incompletely, inaccurately or otherwise improperly disclosed. In so relying, the Plaintiffs were gravely damaged as described herein. The Defendants acted willfully with the intention to conceal and deceive in order to benefit therefrom at the expense of the Plaintiffs.

122. The other Defendants followed Ally's directions because they are or were either subsidiaries of Ally, directly or indirectly owned, controlled and dominated by Ally, or because they are in an unequal economic and/or legal relationship with Ally by which they are beholden to Ally and are thereby controlled and dominated by Ally.

123. At all relevant times, Defendants falsely assured the public, including Plaintiffs, that they were primarily prime quality mortgage lenders who had avoided the excesses of their competitors. To the contrary, affirmative misrepresentations and material omissions permeated the Defendants' websites, customer and investor materials, and required securities filings and presentations.

124. Defendants concealed and did not accurately or fully disclose to any Plaintiff herein any of the foregoing facts. Defendants neither disclosed nor explained their schemes to Plaintiffs at any time. They did the foregoing with the intent to deceive Plaintiffs, the investing public, the U.S. taxpayer, and California and other regulatory agencies.

125. Defendants affirmatively misrepresented their underwriting processes, the value of its mortgages and the fundamental nature of its business model to their investors and to Plaintiffs in their press releases, annual reports and securities filings, all of which were widely distributed to the public, including Plaintiffs.

126. Defendants fraudulently classified their liar loans as "prime" loans. Defendants' personnel who objected to the liar loans were reprimanded or fired.

127. It is precisely the previously alleged loss of value on which the Defendants now seek to capitalize. They would transfer a material portion of that wealth to themselves or those in collusion with them. This scheme includes acquiring the real property at reduced values, collecting U.S. Government money for paper losses, and harvesting the future increase on the value of these artificially depressed homes. Since its government guarantee to purchase troubled assets Ally has been aggressively foreclosing on Plaintiffs homes. With Government protection in its hip pocket, any losses incurred will be covered through loss provisions afforded by the tax payer.

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DEFENDANTS' DECEPTION CONTINUED WITH LOAN MODIFICATIONS

Defendants Deceived Borrowers Into Entering Loan Modifications In An Outright Cash Grab With No Intent Of Ever Modifying, For Fear Of Having Their Own Fraud Discovered By Their Investors

128. After inducing Plaintiff Borrowers into entering dangerous loans through outright deception and in the name of greed - loans which would threaten their livelihoods - Defendants refused to modify Plaintiff Borrowers' loans despite laws and court orders which required them to make good faith efforts to do. Why? To protect themselves. Not the borrowers, but themselves. Because Defendants were required to buy back loans from their investors if a material misrepresentation was discovered, Defendants refused to modify loans which qualified in every regard for one, for fear of having their own fraud and falsified information discovered by the investor, and having to buy back their fraudulent loans, and incurring massive loss. In other words, Defendants placed their fiscal interests ahead of borrowers who desperately needed and *qualified* for the modifications, and who would face financial ruin or homelessness without one. Instead, Defendants chose to line their coffers, rather than offer assistance to the very people they imperiled through their greed – assistance they were under a good faith obligation to provide. Simply put, Defendants were looking out for themselves.

129. Plaintiffs believe and hereby allege that the servicers would want to use MERS to keep the investor information private is to obscure truth from the Plaintiffs and the Certificate Holders of the Trust.

130. Every Pooling and Servicing Agreement has strict Warranties and Material Misrepresentation Provisions that must be honored by the Depositors. In the event that a loan has a material misrepresentation or violates the warranties given to certificate holders and the Trustee of the REMIC, the loan must be purchased from the Certificate Holders and whatever insurance was in place is now void due to fraud being detected on the loan.

131. In the case of loan modifications it benefits the servicer to keep vital information away from the Certificate Holders and the Trustee that oversees the Trust. In the event that fraud is detected on a mortgage loan the "**buy back**" provisions kick in and the servicer or originator, which is sometimes the same company, would be forced to take back the loan. In this case Ally would be forced to put a dead loan on their balance sheet with no hopes of being able to collect on the insurance policy that is in place due to fraud.

132. When Plaintiffs are desperate for help, Ally refuses to assist them. In the event that Ally forwards the true and accurate financial information to the Trustee overseeing the REMIC or to a third party chosen by the Trustee, they can and sometimes do find material misrepresentations that took place at origination. A Plaintiff supplies current financial information up to and including a signed 4506-T and the investor or Ally through their processing centers find out that the income listed on the initial loan application was not correct.

133. This leads to a chain of events that Plaintiffs and the Courts are unaware of. Based on evidence Plaintiffs will introduce at trial Ally instructs their employees to decline any application that contains a material misrepresentation for ***fear of having to buy back the loan.***

134. This practice has led to numerous lawsuits including Government lawsuits in which Government Sponsored Enterprises have independently sent out modification requests and have verified fraudulent information was used at the origination of the Plaintiffs loans.

135. This practice alone has led to millions of American's losing their homes for fear of reprisal from investors that were lied to, when they purchased these *Toxic* loans. Defendants' wrongful acts continue to this day with hardball tactics and deception that continue to threaten Plaintiffs' rights and financial security, as well as the economic future of the State of California. Since 2010, these tactics and Defendants' other wrongful acts have finally been revealed as a result of extensive litigation and Government investigations.

Defendants Used The Promise Of Loan Modifications
As Bait To Damage Plaintiffs' Credit, Preventing Plaintiffs
From Obtaining Financing Anywhere Else

136. Defendants had an unfair and fraudulent pattern on inducing and directing borrowers to fall behind on their payments with the promise that by doing so, they would become eligible for a loan modification. Relying on these representations, Plaintiffs fell behind on their loan payments, but were never offered a loan modification.

137. In doing so, Plaintiffs' credit was substantially damaged, they suffered greatly diminished access to credit and financing, and were penalized with fees, penalties and charges in addition to becoming delinquent on their loan as recommended by the Bank.

138. By recommending that Plaintiffs fall behind, Defendants effectively trapped Plaintiffs into keeping their loan with Defendants, because no other institution would help Plaintiffs after they became delinquent on their mortgage, or after their credit was destroyed.

139. At its most fundamental level, these sorts of unscrupulous business tactics, undermine notions of fair play and good faith in business dealings, and jeopardize the consuming public.

Defendants Used The Promise Of Loan Modifications As Bait
For An Outright Cash-Grab With No Intent To Ever Modify Plaintiffs

140. Defendants also had an unfair and fraudulent pattern of offering borrowers what appeared to be Loan modification offers (called "Trial Payment Plans"), but in reality these offers were nothing more than "cash grabs." Defendants never intended to permanently modify Plaintiffs' loans. Specifically, Defendants would offer Plaintiffs and homeowners who were already on the brink of default/foreclosure a lower payment called a "trial payment." Defendants promised that if Plaintiffs were able to make the trial payment for 3 (or more) months, Defendants would permanently modify Plaintiffs'

payment to be the same amount under the trial payments. But Defendants had a pattern of rejecting these loan modifications despite Plaintiffs' compliance with every term of the loan modification offer. Instead Defendants would use the offer as bait to induce Plaintiffs to make payments which would never be applied to the principal and interest of their loan, but instead would be applied to the mountain of unmerited late charges, and fees, taking what little money the financially imperiled plaintiffs had left, and duping them into spending it on unfairly placed fees and late charges. Defendants never had any intent of modifying their loans, despite Plaintiffs' full compliance with the terms of the offer. Such acts are patently unfair and fraudulent, and Plaintiffs are entitled to remuneration of all payments made under such trial payment plans, as well as an injunction prohibiting Defendants from this deceptive business practice. More specifically, Defendants' unlawful and unfair practices in this regard include, but are not limited to, the following:

a. failing to make good faith efforts to provide them with a loan modification and breaching their contractual obligations, written and implied promises, loan servicing functions owed to Plaintiffs, who fulfilled their obligations by making timely modified payments;
b. making false and/or misleading representations that Plaintiffs were eligible and entered into the trial modification period, which would lead to a permanent modification of their mortgage payment;
c. failing to disclose to Plaintiffs that their modified payments may be reported to credit bureaus as default or late payments that would destroy their credit scores;
d. delaying processing, demanding duplicate documentation, and failing to provide adequate information or communication regarding the loan modification programs to Plaintiffs;
e. engaging in conduct that undermines or violates the spirit or intent of the consumer protection laws alleged in this Complaint; and

f. omitting to inform Plaintiffs that they could be rejected from the trial modification period at any point, and that this would result in the immediate demand for a balloon payment consisting of purported delinquency payments and substantial late fees, default fees, foreclosure fees, inspection fees, property preservation fees, trustee fees, trustee sale guarantee fees, mail fees, recording fees, and default servicing fees.

DEFENDANTS THEN INTENTIONALLY STEAMROLLED WRONGFUL FORECLOSURE AFTER WRONGFUL FORECLOSURE WITHOUT ANY OWNERSHIP INTEREST IN THE NOTES OR DEEDS OF TRUST TO COLLECT WILDLY INFLATED FEES AND TURN UNIMAGINABLE PROFIT

141. Continuing their chronology of greed-driven deception and intentional wrongdoing, Defendants not only (1) intentionally placed Plaintiffs into egregiously dangerous, unaffordable and impossible loans in the name of profit on the secondary market, and, (2) offered Plaintiffs trial loan modifications in an attempt to grab as much cash as they could before foreclosing – none of which would be applied to the principal or interest of Plaintiff's loans - with no intent of ever actually modifying Plaintiffs' loans for fear of having their own (Defendants') fraud discovered by their investors and being forced to buy back the loan at a massive loss, but in a final coup-de-grace (3) intentionally foreclosed on plaintiffs despite having no ownership interest in the notes or deeds of trust, in the name of collecting preposterous and unmerited "foreclosure fees" including: inspection fees, default fees, late fees, advance fees, attorney fees, and trustee fees.

142. Defendants charged these ill-defined and ambiguous fees whose amounts were *never* disclosed to Plaintiffs in any writing or contract whatsoever, unilaterally. They decided how much they wanted to charge for whatever reason they wanted to charge it. And the amounts they charged were tantamount to price gauging, often charging double, triple or even quadruple the fair market value for these "services."

Needless to say, the outrageous price markups all inured to the benefit of the conspiracy of Defendants. Especially in light of the fact that Defendants did not have an ownership interest in the property upon which to foreclose, these charges and fees were entirely unjustified, and constitute numerous cognizable sources of restitution.

143. In short, Defendants made money by initiating foreclosures, and for this very reason intentionally steamrolled wrongful foreclosures over plaintiffs without having any true possessory or ownership interest in the deed of trust, threatening to wrongfully dispossess Plaintiffs of their homes and placing them on the streets.

144. In the greed-driven world of Defendants, neither law nor ethics would be allowed to stand as an obstacle in their insatiable hunt for profit.

__Defendants Seek to Enforce Notes & Deeds of Trust__
__Without Evidencing Their Ownership Interest__

145. Securitizing a loan generally entails the sale of a loan to private investors, together with other loans, in a "pool" of loans. Indeed, as typically executed, a securitization process may result in up to three successive sales of the loan or in interests in the loan. These interests in the same loan are sold in tranches that can be found in many collateralized debt obligation securities. As a result, the ultimate note holders are many, disparate and unrelated entities, no one of which can lawfully enforce the note without the participation of all the other anonymous note holders to partial interests in a single home loan.

146. Defendants' continue to demand payment and to foreclose and threaten to foreclose on Plaintiffs, despite the facts that:

a. Defendants have no proof that they own the notes and deeds of trust they seek to enforce;
b. There is considerable evidence that Defendants do not own the notes and deeds of trust they enforce and seek to enforce and based thereon, Plaintiffs allege that they do not; and

c. Whether or not they can demonstrate ownership of the requisite notes and deeds of trust, Defendants lack the legal right to enforce the foregoing because they have not complied with disclosure requirements intended to assure mortgages are funded with monies obtained lawfully.

Plaintiffs believe and thereon allege that Defendants have made demand for payment on the Plaintiffs with respect to Plaintiffs' properties at a time when Defendants are incapable of establishing (and do not have any credible knowledge regarding) who owns the promissory notes Defendants are purportedly servicing. Plaintiffs believe and thereon allege that because Defendants are not the holders of Plaintiffs' notes and deeds of trust and are not operating under a valid power from the various current holders of the notes and deeds of trust, Defendants may not enforce the notes or deeds of trust.

Defendants' Improper Securitization: Foreclosing Trusts Had No Ownership Interest In Plaintiffs' Notes Or Deeds Of Trust Under The Explicit Terms of Their Own Pooling & Service Agreements

147. Almost every Mortgage loan investigated which was produced by a major Banking Institution between the years 2000 - 2008 was securitized. Securitization is the act of producing an investment vehicle of Mortgage-Backed Securities ("MBS") using the Borrower's Mortgage NOTE as the under-lying corpus, as collateral.

148. In a typical Securitization Transaction, mortgage loans are transferred by loan "Originators" to a "Sponsor." The "Sponsor", in turn, sells the mortgage loans to a "Depositor," a single –purpose entity. When the Sponsor acts in selling capacity, it is often referred to as a "Seller," as well as a Sponsor. The Depositor, in turn, deposits the loans into the securitization trust also known as a "REMIC", pursuant to a Pooling and Servicing Agreement ("PSA") or similarly-named agreement.

149. The parties to the Pooling and Servicing Agreement (PSA) generally are the Seller, the Depositor, the "Master Servicer," which services the mortgage loans and/or

monitors the servicing of the mortgage loans by sub-servicers, and the "Trustee" who administers the trust that is established pursuant to the PSA.

150. The reason loans are pooled and placed into these loan trusts named REMIC's is due to income tax purposes. A REMIC is an "SPV" or Special Purpose Vehicle that is treated by the IRS as a "QSPE" or Qualifying Special Purpose Entity. It specifically was designed by Congress to allow the vehicle to not be taxed as the cash flows through the vehicle and distributed to the investor and certificate holders. It is like an S Corp where there is no double taxation.

151. Pooling and Servicing Agreements only allow loans to be placed into a REMIC for **two years** after the set-up of the Trust due to tax implications. You can only substitute in loans for two years thereafter, if there is non-compliance with the aforementioned PSA the penalty is 100% of the face value of the asset in tax penalties.

152. Plaintiffs believe that their loans are illegally being substituted in and out of these loan Trusts in direct violation of the PSA's in order to cure deficiencies with the Chain of Title that never should have occurred to begin with. Defendants are attempting to cure these defects with the use of (MERS) Mortgage Electronic Registration System.

153. Moreover, Plaintiffs allege that in numerous instances, Defendants foreclosed on behalf of trusts which had no ownership interest whatsoever in the DOT, **because the trusts had been-long closed under the terms of their very own PSA.** In other words, it was impossible for the subject loan to be placed into the trust such that the trust would have any ownership interest in the loan upon which to foreclose.

154. Defendants are defrauding Plaintiff's by transferring or purporting to transfer ownership of these loans to entities that **can no longer accept these assigned loans**, and thus have no ownership interest in the loans upon which they could foreclose. Under strict REMIC rules a loan must follow a specific protocol in order to become property of the Trust.

a. Originator/ Lender must endorse the Note in Blank to the Sponsor/Seller

b. The Seller assigns the Note to the Depositor/Purchaser who is to insure that all of the trust assets are actually deposited into the REMIC.

c. ~~The Depositor assigns all of the Notes and Deeds of Trust/Mortgages into the name of the Issuing Entity.~~

d. The Issuing Entity is the newly formed REMIC that obtains an issuer number from the Securities and Exchange Commission to issue Certificates to Investors.

e. The Issuing Entity hires an independent Trustee to become the Custodian of the Trust. Trustee's job is to supervise the activities of the Trust and to insure that the Certificate Holders/Investors **"True Owner's"** of the loans are paid based on the Certificate grades they purchased.

f. The Trustee hires a Master Servicer and Sub-Servicers to collect mortgage payments and service the loans on behalf of the Trust.

g. In the event of a foreclosure action the REMIC Trustee must follow proper foreclosure procedures as laid out in the Pooling and Servicing Agreement.

155. It is standard in the securitization industry and the secondary markets to endorse a note to blank. Most often times the pool servicing agreement requires the Depositor to endorse the Note to Blank, in other words it is not endorsed to a person or entity, it's endorsed in blank making the Note a bear or bear instrument making it possible for the holder of that instrument to Deposit it into the Trust as required by the pool agreement. However, with this endorsement the pooling and servicing agreement requires that the Depositor transfer the Note to the Trustee for the benefit of the certificate holders.

156. A "Custodian" is sometimes a party to the PSA and sometimes enters into a separate Custodial Agreement with the Trustee or the Trustee can act as both if so designated in the PSA.

157. Pursuant to the Custodial agreement, the Custodian maintains possession of the loan files on behalf of the Trustee.

158. An "Underwriter" typically enters into an Underwriting Agreement with the Depositor pursuant to which the Underwriter commits to purchase certain of the trust certificates and/or notes issued by the trust. In turn, the trust certificates and/or notes are sold to investors by the Underwriter (or Underwriters) pursuant to a Registration Statement or Prospectus filed with the Securities and Exchange Commission ("SEC").

159. When the transaction is complete, the Trust files a Form 8-K with the SEC. The form is accompanied by the documents involved in the securitization transaction.

160. Trust certificates are frequently issued in different classes. The different classes are associated with different payment terms, and different levels of risk. One loan can be placed in multiple classes of securities; these different classes of trust certificates are called "Tranches". The terms, including payment schedule, distribution priority, and allocation of losses, and the level of risk attributable to each class of certificates, or tranche, are defined in the PSA and related exhibits, and in the Prospectus and Prospectus Supplements.

161. When a loan is placed into a Tranche there can be more than one owner of the security since the loan has been chopped up into smaller pieces and listed as security in different classes of certificates based on risk.

162. The relative risk associated with any class, or tranche, of the trust certificates may be set by various devices, including credit enhancements, the subordination of lower level tranches through an agreement to absorb losses first, the over-collateralization of loan pools in excess of the aggregate amount of the trust certificates, or the creation of an excess spread fund to cover the difference between the interest collected from the pooled mortgage notes and the amounts owed to investors who purchase the trust certificates.

163. Subordinating the right of certain of the trust certificates to receive cash flow from the pooled mortgage until senior trust certificates have been paid, or allocating the cash flow from the pooled mortgages until senior certificates have been paid, or

allocating the cash flow from the pooled mortgages to different levels of trust certificates may be employed to create a tiered structure known as a **"Waterfall."**

164. Losses from mortgage defaults, delinquencies, or other factors may be allocated in reverse seniority, with the junior tranches incurring losses first until their interests are reduced to zero. Each class of trust certificates or tranche may have a credit rating issued by one or more nationally recognized statistical rating organizations who rate the likelihood of payment of interest and principal owed to the tranche, based on their internal projections of expected losses from the loan pool.

165. Securitization transactions involving government sponsored entities such as Fannie Mae and Freddie Mac follow the same general pattern involving the pooling of loans and sale of securities to investors, although the terminology and intermediate entities may be different.

166. In simple terms, in a securitization transaction, the loan is made by the "originator," and then sold into the market. Ownership of the loan is transferred to a trust. Certain files, including the original note and original deed of trust are maintained by a custodian or the trustee. The loan is serviced by the servicer, who collects the payments, keeps the payment history, and initiates (but typically does not conduct) foreclosure sales. Participants in the trust earn income, and absorb losses, according to the terms of the trust and associated contracts.

167. Other mortgage notes are owned by the issuing banks and are held in inventory for their own investment purposes.

168. The following diagram illustrates the various parties involved in the typical securitization transaction, and also evidences custody and ownership of the underlying mortgage note.

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It is important to have a general familiarity with mortgage securitization in order to understand the foreclosure process. Securitization involves a series of conveyances of the note evidencing the residential loan and assignment of the mortgage or trust deed securing it. Therefore, chain of title and beneficial interest issues frequently turn on the securitization trajectories.

Securitization is the process pooling loans into "mortgage-backed securities" or "MBS" for sale to investors. MBS is an investment instrument backed by an undivided interest in a pool of mortgages or trust deeds. Income from the underlying mortgages is used to pay interest and principal on the securities. Figure A below is a simplified schematic depicting the general securitization process and some of the parties involved.

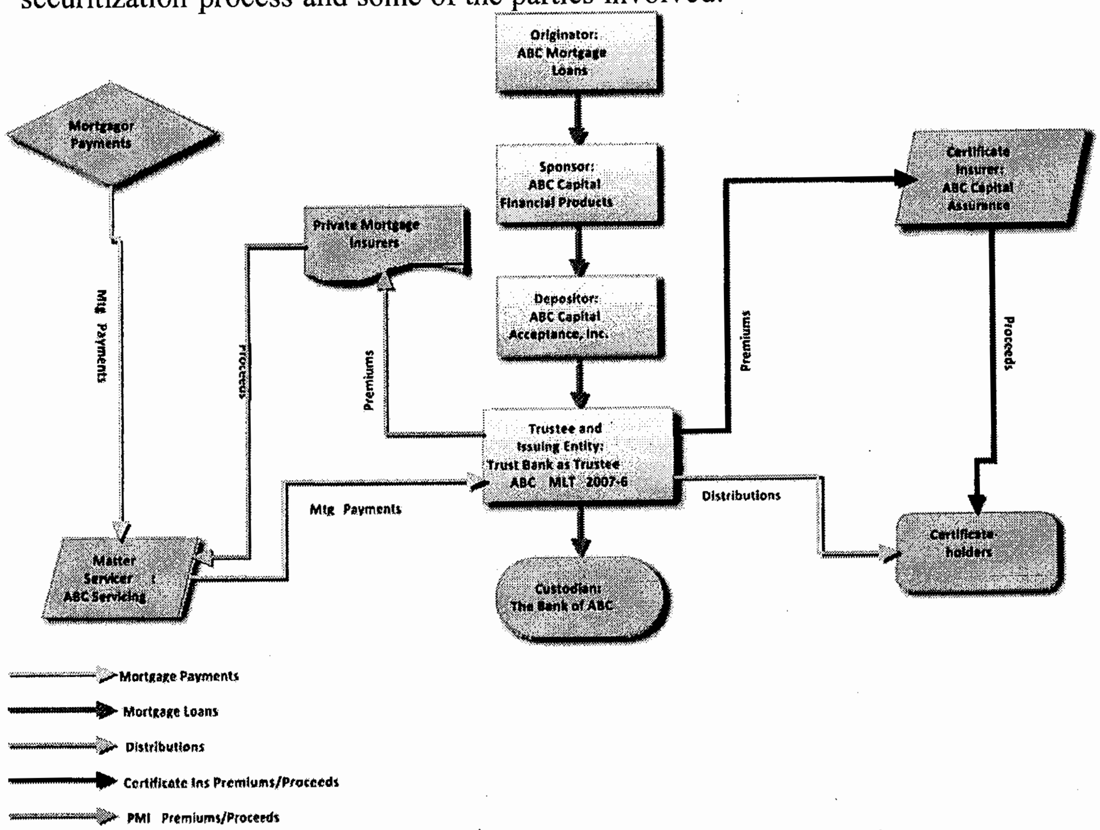

Figure A - Securitization Schematic

The process begins with *Originators,* which are the lenders (such as banks or finance companies) that initially make the loans to homeowners. *Sponsor/Sellers* (or "sponsors") purchase these loans from one or more Originators to form the pool of assets to be securitized. (Most large financial institutions are both Originators and Sponsor/Sellers.) A *Depositor* creates a *Securitization Trust*, a special-purpose entity, for the securitized transaction. The depositor acquires the pooled assets from the Sponsor/Seller and in turn deposits them into the Securitization Trust. An *Issuer* acquires the Securitization Trust and issues certificates to eventually be sold to investors.

169. Defendants, and each of them, wrongfully acted and continue to act as if they are either the owner, beneficiary, successor, assignee or servicer, or have some other ~~right, title, or interest in Plaintiffs' notes and deeds of trust, when, in reality, they have no basis to assert any such right, title or interest.~~

170. As a result of Defendants' improper scheme, Plaintiffs lost their equity in their homes, their credit ratings and histories were damaged or destroyed, and Plaintiffs incurred material other costs and expenses, described herein. At the same time, Defendants took from Plaintiffs and other borrowers billions of dollars in interest payments and fees and generated billions of dollars in illegal and fraudulently obtained profits by selling their loans at inflated values and using the loans as collateral for fraudulent swaps.

__The Aftermath of Defendants' Wrongful Foreclosures__

171. To add further insult to injury, Defendants, knowing of this massive fraud, and sought to swoop in like the Civil War carpetbaggers and profiteer from the carnage that they had wreaked on Plaintiffs.

172. With the proceeds of TARP funds and a voraciousness that has already been chastised by numerous courts, Defendants then sought to obliterate the last vestiges of value held by Plaintiffs, and proceeded to flip distressed assets for a profit.

173. Defendants' other improper acts since 2008 are numerous, including but not limited to: (1) issuing Notices of Default to some Plaintiffs in violation of Cal. Civil Code §2923.5; (2)issuing Notices of Defaults, and initiating foreclosure on behalf of those with no beneficial interest in the note or deed of trust , (3) conducting the unauthorized sale of Plaintiff's property by a trustee who was never properly appointed or substituted as trustee (4) misrepresenting their intention to arrange loan modifications for many Plaintiffs, while in fact creating abusive roadblocks to deprive Plaintiffs of their rights; and (5) failing to respond to most Plaintiffs' communications while often erecting barriers to make it difficult for the Plaintiffs to communicate with them.

174. Defendants continue to demand payment and to threaten to foreclose on Plaintiffs, despite the facts that: (1) Defendants have no proof that they own the notes and ~~deeds of trust they seek to enforce; (2) there is considerable evidence that Defendants *do not* own the notes and deeds of trust they enforce and seek to enforce and based thereon,~~ Plaintiffs allege that they do not; and (3) whether or not they can demonstrate ownership of the requisite notes and deeds of trust, Defendants lack the legal right to enforce the foregoing because they have not complied with required disclosure requirements intended to assure that mortgages are funded with monies obtained lawfully in addition to California's non-judicial foreclosure statutes codified at Cal. Civ. Code 2924 et seq., with which, it has been repeatedly affirmed by California courts, "*strict compliance*" is required.

175. As a proximate and foreseeable result of the Defendants' sale of the notes and deeds of trust regarding Plaintiffs' properties and others similarly situated for more than the actual value of such instruments, securitization pools lacked the cash flow necessary to maintain the securitization pools in accordance with their indentures. Further, it was only a matter of time before Defendants' fraudulent offshore swaps were uncovered. The unraveling of the Defendants' fraudulent scheme has materially depressed the price of real estate in many parts of California, particularly including the real estate owned by Plaintiffs.

176. Defendants have admitted in their various securities filings that they sold Plaintiffs' notes and mortgages. There is no evidence that Defendants have re-acquired Plaintiffs' notes or deeds of trust. Accordingly, their claims of subsequent ownership appear to be specious.

177. Plaintiffs believe and thereon allege that Defendants have made demand for payment on the Plaintiffs with respect to Plaintiffs' properties at a time when Defendants were incapable of establishing (and did not have any credible knowledge regarding) who owns the promissory notes Defendants were purportedly servicing, and that these acts are continuing. Because Defendants are not, and were not at the relevant times, the holders

of Plaintiffs' notes and deeds of trust and are not, and were not at the relevant times, operating under a valid power from the current holders of the notes and deeds of trust, Defendants are not and were not at the relevant times allowed legally to enforce the notes or deeds of trust. Defendants' attempts to enforce these notes were nothing but a sham and a fraud upon the Plaintiffs, the public, and the courts.

BANK DEFENDANTS OWED PLAINTIFFS A DUTY

178. For seven separate and independent reasons, Bank Defendants owed Plaintiffs a duty.

179. **First** under California Civil Code §1572, parties to a contract have an unequivocal duty to disclose material facts to one another. (*Walker v. KFC Corp.* (S.D.Cal. 1981) 515 F.Supp. 612, 622 ["[section] 1572 affirmatively imposes the duty not to suppress facts on persons who are parties to a contract or who are inducing others to enter into a contract."]) Here Plaintiffs are engaged in contracts with respective loan contracts with each of the Bank Defendants, and plaintiffs have alleged numerous failure to disclose such material facts. (See paragraph 197, and Appendix A).

180. **Second,** California Civil Code §§1709 and 1710 establish a separate independent duty of disclosure, even in the absence of a contractual relationship, where, as here, Bank Defendants and HCLS have made partial inaccurate disclosures which are likely to mislead for want of the missing fact, codifying the long-standing rule that the "telling of a half-truth calculated to deceive, is fraud." Plaintiffs have alleged numerous such partially misleading disclosures at paragraph 200, of this Complaint, and in Appendix A. The Supreme Court of California has held the same. (*Warner Constr. Corp., supra,* 2 Cal.3d at 294 [A defendant has a duty of disclosure "when the defendant makes partial representations but also suppresses some material facts."]).

181. **Third,** Bank Defendants and HCLS had exclusive knowledge of numerous items of highly material information which they did not disclose. Numerous cases including those from the Supreme Court of California hold that a defendant has a duty of

disclosure "when the defendant had exclusive knowledge of material facts not known to plaintiff." *Warner Constr. Corp., supra,* 2 Cal.3d at 294

~~182. **Fourth**, a Defendant has a duty to disclose "when it actively conceals a material fact from the plaintiff." *Warner Constr. Corp., supra,* 2 Cal.3d at 294. This~~ Complaint alleges throughout that Bank Defendants and HCLS embarked on a campaign of active suppression and concealment of numerous material facts.

183. **Fifth**, Numerous court, including the California Court of Appeal have held that where, as here, the disclosures in Plaintiffs' Option ARM loans discussing negative amortization, only frame negative amortization as a mere *possibility*, rather than the reality which is that when making a minimum payment negative amortization is a *certainty*, the disclosure is insufficient under law, giving rise to a valid cause of action not only for UCL but also for fraud/misrepresentation. (*Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230.) The court in *Boshcma* explicitly held that Banks have a duty to disclose such material information. Plaintiffs allege that Bank Defendants, identically, failed to disclose the certainty of negative amortization in the Option ARM loans. Plaintiffs have attached supporting documentation. (See Appendix A).

184. **Sixth,** Defendants have **ceased acting as conventional money lenders**. In conducting the wrongs described above and throughout this Complaint, the Bank Defendants stepped vastly outside of their role as conventional money lenders, and instead morphed into an enterprise engaged in intentional fraud upon their borrowers. Among their numerous departures from the actions of a conventional money lender, Defendants:

a. **Intentionally falsified the values and appraisals of each of the Plaintiffs' subject properties** – numerous courts have held that such falsification of appraisals "do not fall within a bank's role as a traditional money lender." *Sullivan v. JP Morgan Chase Bank, N.A.* (E.D.Cal. 2010) 725 F.Supp.2d 1087, 1094; *Watkinson v. MortgageIT* (2010) 2010 WL 2196083 at *9

b. Artificially and fraudulently inflated the value of all of the California real estate market, (as opposed to just those of Plaintiffs herein) in **a Price Fixing scheme achieved through pervasive and coordinated falsification of appraisals** conducted hand-in-hand with their wholly-owned-appraisal subsidiary and alter-ego HCLS, knowing that by doing so their fraudulent appraisals would act as comparables which would artificially inflate the rest of the market (as detailed in paragraphs 64-89, above)

c. **Coerced their appraisers to falsify their appraisals through bribery, undue influence, instruction, appraiser selection manipulation, financial pressure, as well as threats – both explicit and implicit** – that if their appraisals didn't return a valuation above that demanded by Bank Defendants (1) future business with the appraiser would either diminish or discontinue altogether or (2) that the individual appraiser would be fired/blacklisted. Specifically, these allegations are found above at paragraphs 67-89,

d. Intentionally and knowingly subjected their appraisers to known conflicts of interest

e. **Intentionally falsifying the income and asset documentation** of their borrowers to place them into loans which Defendants knew Plaintiffs could not afford, and would default upon to a mathematical certainty. Numerous courts have held banks liable for fraud for such identical acts because such acts "do not fall within a bank's traditional role as money lender." (*Sullivan v. JP Morgan Chase Bank, N.A.* (E.D.Cal. 2010) 725 F.Supp.2d 1087, 1094; *Watkinson v. MortgageIT* (2010) 2010 WL 2196083 at *9.)

f. Abandoned the "originate to hold" business model of conventional money lenders, and instead became a **loan packaging and re-selling facility** in

which bank defendants **originated loans for the sole purpose of reselling them on the secondary market for vast profit** –creating an incentive to place borrowers into loans which bank defendants knew they could not afford and simultaneously passing along all risk of default to the purchasers of the loan. (See Paragraphs 45-49).

g. Intentionally abandoned *industry-standard* underwriting guidelines – the hallmark of conventional money lending - in order to place borrowers into loans they *knew* they could not afford solely in the name of profit;

h. **Originated loans with an eye towards immediately securitizing and re-selling them on the secondary market and becoming the <u>servicer</u> on the loan**, thus creating an incentive to place borrowers into loans they knew their borrowers could not afford because by doing so Defendants-now-turned-servicers would be in a position to collect highly-lucrative fees from their imperiled borrowers, such as late fees, default fees, and indeed foreclosure fees. In doing so, Defendants became anything but conventional money lenders – **their interests were directly aligned with those of a servicer.** Numerous courts have held that where, as here, a bank acts as servicer they have exceed their role as a conventional money lender. (*Johnson v. HSBC Bank USA, Nat. Ass'n* (S.D.Cal. 2012) 2012 WL 928433 *4.)

i. **Entered into loan modifications with Plaintiffs.** A lender goes beyond its "role as a silent lender and loan servicer [when it] offer[s] an opportunity to plaintiffs for loan modification and to engage with them concerning the trial period plan. ... [T]his is precisely beyond the domain of a usual money lender ... [and] constitutes sufficient active participation to create a duty of care", as held by numerous courts. (*Garcia v. Ocwen Loan Serv., LLC* (N.D. Cal.) 2010 WL 1881098 at *3; *Ansanelli v. JPMorgan Chase Bank, N.A.,* No. C 10-03892 WHA, 2011 U.S. Dist.

LEXIS 32350, at *21-22 (N.D.Cal. Mar. 28, 2011; *Johnson v. HSBC Bank USA,* (S.D. Cal. 2012) 2012 WL 928433 at *3.)

j. **Engaged in massive intentional fraud upon its borrowers.** While a bank may in the course of conventional lending act negligently from time to time, intentional committed torts cannot be said to be conventional practice for lenders. If Bank Defendants wish to assert that massive intentional fraud on their borrowers is conventional practice for lenders, they should do so at trial. Numerous courts, including the Supreme Court of the United States have recognized that a duty properly attaches to a bank when it acts intentionally, rather than negligently. (*Connor v. Great Western Sav. & Loan Ass'n* (1968) 69 Cal.2d 850, 865; *Nymark v. Heart Fed. Savings & Loan Assn.* (1991) 231 Cal.App.3d 1089; *Becker v. Wells Fargo Bank, N.A.* (E.D.Cal. 2011) 2011 WL 3319577; *Dumas, supra,* 2011 WL 4906412; *Champlaie, supra,* 706 F.Supp.2d at 1060; *Watkinson v. MortgageIT, Inc.* (S.D. Cal. 2010) 2010 WL 2196083.)

185. **Seventh**, and finally, even when acting as a conventional money lender, Banks nevertheless owe a duty to their borrowers, when they meet the following test:

> In California, the test for determining whether a financial institution owes a duty of care to a borrower-client " 'involves the balancing of various factors, among which are [1] the extent to which the transaction was intended to affect the plaintiff, [2] the foreseeability of harm to him, [3] the degree of certainty that the plaintiff suffered injury, [4] the closeness of the connection between the defendant's conduct and the injury suffered, [5] the moral blame attached to the defendant's conduct, and [6] the policy of preventing future harm.

(*Nymark v. Heart Fed. Savings & Loan Assn.* (1991) 231 Cal.App.3d 1089, 1098). Each of the 6 elements are amply alleged throughout this Complaint.

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FIRST CAUSE OF ACTION

(*By All Plaintiffs – Fraudulent Concealment – Against All Defendants*)

~~186. The preceding paragraphs and subsequent causes of action are hereby incorporated by reference as though fully set forth herein.~~

187. **IN ADDITION TO THE ALLEGATIONS MADE THROUGHOUT THIS COMPLAINT, WHICH APPLY TO ALL PLAINTIFFS (EXCEPT WHERE OTHERWISE NOTED), APPENDIX "A" ("INDIVIDUALIZED PLAINTIFF ALLEGATIONS") PROVIDES INDIVIDUALIZED ALLEGATIONS AS TO EACH AND EVERY PLAINTIFF IN THIS ACTION AND THE SPECIFIC WRONGS DONE BY EACH DEFENDANT.** By this reference, Plaintiffs hereby incorporate Appendix "A" to this Complaint.

188. In connection with entering into mortgage contracts with Plaintiffs, from 2003 through 2008, Defendants:

a. engaged in a centrally-directed fraud by which they concealed numerous material facts, including that Ally, then one of the nation's largest mortgage lenders, and other Defendants herein, had ceased acting as a conventional money lender and had, instead, morphed into an enterprise engaged in systematic fraud on all of its material constituencies, including Plaintiffs – a fraud their *own internal reports* concluded would cause a liquidity crisis and thereby destroy the equity value of each borrower's home; and

b. engaged in widespread disclosure of information that was broadly disseminated to the public, including Plaintiffs, but suppressed contrary material facts relevant to Plaintiffs' decisions regarding whether they should enter into mortgage contracts with the Defendants.

189. On or about January 2003, Ally Defendants determined that they could not sustain their businesses. So Ally Defendants hatched a simple plan – they would pool

their loans, fraudulently inflate the value of these pooled loans and then sell the pools to unsuspecting investors for grossly unmerited profit.

190. But to feed its investors and continue to make such never-before-seen profits, Defendants needed more borrowers. In turn, Ally Defendants began disregarding their own underwriting standards, and approving borrowers who were grossly under-qualified, in the name of getting as many loans out the door, and sold to investors for a profit, as possible. As part of this scheme, Defendants fraudulently inflated the appraisal values of Plaintiffs' properties, as well as the real estate values throughout California, knowing that their scheme would cause the market to crash, and the precipitous decline of real estate values throughout the State.

191. Rapidly, these two intertwined schemes grew into a brazen plot to disregard underwriting standards and fraudulently inflate property values . . . in order to take business from legitimate mortgage providers, and moved on to massive securities fraud hand-in-hand with concealment from, and deception of, Plaintiffs and other mortgag[ors] on an unprecedented scale.

192. To further this scheme, Ally, using its size and influence in California, began systematically creating false and inflated property appraisals throughout California, through its wholly-owned subsidiary HLCS Appraisals, hand-in-hand with the other Defendants herein. The purpose was two-fold:

a. First, by falsely inflating said property values, investors were defrauded into believing their investments in these loans were less risky than they actually were. This in turn led to more sales and even more profits on the secondary market.
b. Second, Defendants would then turn around and use these false property valuations to induce Plaintiffs and other borrowers into entering ever-larger loans on increasingly risky terms. The result was, again, more profits.

193. However, Defendants knew these loans were unsustainable for the borrowers and, to a certainty, would result in a crash that would destroy the equity invested by Plaintiffs and other of Defendants' borrowers.

194. Defendants expected that the deteriorating quality of the loans that Defendants were writing, and the poor performance over time of those loans, would ultimately curtail Defendants ability to sell those loans in the secondary mortgage market and/or to purchase credit default swaps as hedges.

195. Despite their awareness of and concerns about the increasing risk the Defendants were undertaking, they hid these risks from the Plaintiffs, borrowers, potential borrowers, and investors.

196. Defendants had exclusive knowledge, not available to Plaintiffs, of material facts pertaining to their mortgage lending activities that it did not disclose to Plaintiffs at the time they were entering into contracts with Plaintiffs.

197. The Defendants misled the Plaintiffs, borrowers, potential borrowers and investors by failing to disclose substantial negative information regarding Defendants' loan products, namely that:

a. The fact that Defendants had intentionally abandoned their own as well as industry standard underwriting guidelines;
b. The fact that Defendants had intentionally abandoned their own as well as industry standard underwriting guidelines *for the purpose of* placing borrowers into loans which they knew borrowers could not afford and upon which they knew borrowers would default to a mathematical certainty;
c. The fact that Defendants had intentionally and falsely inflated the appraisals on Plaintiffs properties, hand in hand with Defendant HCLS.
d. The fact that Defendants had systematically, intentionally, and artificially inflated the prices of real estate throughout California (otherwise known as "market fixing") through HCLS, over whom Defendants exercised

dominion, resulting in:

i. Plaintiffs being forced to pay much more for their properties than they were truly worth;

ii. Plaintiffs being forced to take out larger loans to afford the same property, resulting in more profit to Defendant Banks by virtue of additional interest Plaintiffs would have to pay;

e. That Defendants had fixed the real-estate market and systematically driven the prices of property well above what they were worth, with the intent of creating the illusion of a naturally-appreciating real estate economy to spur a purchase and refinance boom resulting in more business and thus more profits for the bank;

f. That Defendants knew that the true uninflated value of Plaintiffs' homes were insufficient to justify the size of the loans Plaintiffs were being given;

g. That Defendants falsely inflated the appraisals of Plaintiffs' properties in order to place Plaintiffs into loans that they would not otherwise be able to obtain or afford, all so Defendants and their employee-Loan Consultants could turn profit;

h. That Defendants falsely inflated the appraisals of Plaintiffs' properties in order to assure them that the property was indeed worth what they were paying for it, such that Plaintiff would move forward with the purchase;

i. That Defendants falsely inflated the appraisals of Plaintiffs' properties to induce plaintiffs to enter into loan and assure them that their collateral was sound;

j. That Defendants had falsified Plaintiffs' income and asset documentation to intentionally place them into loans they could not otherwise afford;

k. That Defendants and co-conspirator HCLS, the appraisal arm of Ally Defendants' fraud, was subject to a massive conflict of interest precluding

it from being able to render good-faith, accurate, technically proper appraisals in conformity with the standards required in the profession;

l. That Defendants possessed internal reports concluding that if a Plaintiff took a loan from Defendants, that Plaintiff would suffer material losses, including but not limited to the loss of substantial equity;

m. That Defendants knew their scheme would cause a liquidity crisis that would devastate home prices;

n. That Defendants were no longer making loans based on a borrower's qualifications or their ability to afford such a loan and that those ideas were now unimportant to them, but were instead making loans without regard for a borrowers qualifications or ability to afford simply to create sufficient product to sell to investors on the secondary market for profit;

o. That Defendants *knew* Plaintiff-borrowers could not afford the loans they were being placed into and which they knew Plaintiffs would default upon to a mathematical *certainty*, but intentionally placed them into these impossible loans nonetheless in the name of making profit;

p. That Defendants actively concealed the material terms of their loans from their borrowers, including but not limited to the fact a borrower was *certain* to defer interest under an Option ARM loan by making the minimum payment in aims of inducing borrowers to sign a loan they would not have otherwise accepted, so once again Defendants could make a profit by selling such loans;

q. That Defendants were no longer making loans based upon the profitability of their mortgage lending business (but rather instead upon the profitability of sales of these loans to investors and secondary markets);

r. That because of this profitable scheme and because their loans were insured, Defendants stood to profit regardless of whether their loans

performed and as such had no incentive to insure that borrowers were actually qualified for (or could make payments on) the loans into which they were being placed – in fact they had a disincentive to do so;

s. That because Defendants were selling their loans to investors rather than holding their loans, Defendants had no incentive to insure that the borrowers were actually qualified for (or could make payments on) the loans into which they were being placed – in fact they had a disincentive to do so;

t. That Defendants were in fact dependent on selling loans it originated into the secondary mortgage market, to sustain its business;

u. That Defendants were making loans simply to create sufficient product to sell to investors for profit;

v. That Defendants had ceased acting as conventional money lenders and had, instead, morphed into an enterprise engaged in systematic fraud on all of its material constituencies, including Plaintiffs;

w. That Defendants had ceased acting as conventional money lenders who carried their own risk and turned profit through the production of low-risk loans, and instead morphed into a loan conveyor belt, packaging loans with little if any regard for their underwriting standards, and selling those loans at extravagant profit to investors on the secondary market to whom the risk would be passed on, through fraud and misrepresentation – a business enterprise vastly more profitable than the business model of being a conventional money lender;

x. That in furtherance of this scheme, Defendants had in fact abandoned their conventional lending business and prudent lending standards, consistently lending to those who were grossly under-qualified;

y. Defendants knew these loans were unsustainable for themselves and the borrowers and to a certainty would result in a crash that would destroy the

equity invested by Plaintiffs and other of Defendants' borrowers;

z. Defendants, their officers and employees internally referred to these loans as "Sacks of Shit";

aa. Defendants knew the sheer scope of their loan portfolio and fraudulent packaging of the portfolio would cause a liquidity crisis that would devastate home prices and gravely damage Plaintiffs;

bb. Defendants knew Plaintiffs would be materially and substantially harmed by contracting with Defendants;

cc. Defendants knew their business model was simply unsustainable;

dd. Defendants' pursuit of a matching strategy in which it matched the terms of any loan being offered in the market, even loans offered by primarily subprime originators dangerously placed borrowers into loans regardless of whether or not they were actually qualified for the loan or could actually afford the loan, instead ceding their underwriting guidelines to whoever was the most lax lender at the time, regardless of whether or not *that* lenders guidelines were proper, safe, negligent or even dangerous or guided by reason;

ee. The high percentage of loans it originated that were outside its own already widened underwriting guidelines due to loans made as exceptions to guidelines;

ff. Defendants' definition of "prime" loans included loans made to borrowers with FICO scores well below any industry standard definition of prime credit quality;

gg. The high percentage of Defendants' subprime originations that had a loan to value ratio of 100%; and

hh. Defendants' subprime loans had significant additional risk factors, beyond the subprime credit history of the borrower, associated with increased default rates, including reduced documentation, stated income,

piggyback second liens, and LTVs in excess of 95%.

198. Defendants knew this negative information from numerous reports they regularly received and from regulators and presentations prepared by Defendants' risk assessment officers. Defendants nevertheless concealed this negative information from the public, including Plaintiffs.

199. The Plaintiffs did not know the concealed facts.

200. In addition to said concealments, Defendants, hand-in-hand with one another, further stated numerous half-truths and made partial representations (through Defendants' securities filings, speeches, advertisements, public utterances, websites, brokers, loan consultants, branches, communications with clients, and other media) calculated to deceive Plaintiffs and to create a substantially false impression. By making such partial misrepresentations, Defendants incurred a duty to speak the whole truth such that Defendants did not conceal any facts which would materially qualify those stated. Such **partial misrepresentations** include:

a. Representations calculated to make a borrower believe that his or her payment would only be X dollars, when in reality such payment was only available for a limited undisclosed period of time and would then drastically increase;

b. Representations that a borrower could afford payments under their loan, calculated to make a borrower believe that the loan payment would always be constant, but made knowing that the such payments would later drastically increase and knowing that the borrower would be *unable* to afford such increased payments;

c. Representations that a borrower qualified for a loan, when in reality the borrower's qualification was only obtained through Bank Defendants' falsification of the borrower's income, asset and other documentation, done without the borrower's knowledge;

d. Bank Defendants' intentional publication and dissemination of their underwriting guidelines intended to create the perception that Defendants lent in conformity with those guidelines and that their lending standards were safe, when in reality Defendants had abandoned their underwriting guidelines and were issuing loans which they knew were in unsafe;

e. Representations made by Bank Defendants that a borrower *qualified* for a loan (oftentimes based on documents falsified by Defendants) calculated to induce the borrower's belief they could *afford* their loan, when in reality Defendants knew borrowers would be unable to afford their loan as a matter of fact (oftentimes because Defendants had falsified their income and asset documentation as well as abandoned their own underwriting guidelines);

f. Representations by Bank Defendants to a borrower that his payment would cover both principal and interest, and calculated to induce the borrower to believe that his or her payment would always cover principal and interest, when in reality that same payment would no longer cover any principal after a very short period of time, and indeed would not even cover the minimum interest on the loan resulting in deferred interest;

g. Representations that by making the minimum payment of an Option ARM loan, a party *may* defer interest (aka "negatively amortize"), when in *reality* by making the minimum payment a party was *certain* to defer interest. As the California Court of Appeals in *Boschma* put it, a disclosure of what may happen, is not a sufficient disclosure of what will happen;

h. The provision of an intentionally ambiguous Truth in Lending Disclosure ("TILDS") Payment Schedule which did not make it clear that borrowers could have avoided negative amortization (under an Option ARM loan) by making payments larger than those that were mandated by the payment

schedule, in fact the payment schedule created the materially false impression that by following the recommended payment schedule, Plaintiff borrowers would not negatively amortize their loan;

i. Other partial misrepresentations and half-truths calculated to induce the borrower to fundamentally misunderstand the nature of their loan, such that Plaintiff-borrowers would agree to a loan they would not have otherwise agreed to, such as the meaning of a pre-payment penalty, or whether they had a pre-payment penalty.

201. Defendants intended to deceive Plaintiffs and induce their reliance, by intentionally failing to disclose the above concealments. This deception was essential to their scheme to make extravagant profit by packaging and reselling these loans on the secondary market.

202. Plaintiffs did in fact rely on each of the aforementioned concealments in deciding to contract with Defendants

203. Plaintiffs reasonably and foreseeably relied upon the deception of Defendants in deciding to enter into a mortgage contract with Ally Defendants - Defendants were among the nation's leading providers of mortgages. It was highly regarded and by dint of its long-term campaign of deception through securities filings, press releases, public utterances, web sites, advertisements, brokers, loan consultants and branch offices, Bank Defendants had acquired a reputation for performance and quality underwriting.

204. Moreover, as consumers unfamiliar with the myriad intricacies, terms and mathematics of mortgages (such as amortization calculations, negative amortization, loan recasting, front and back end debt to income ratios, indices, margins, ad nauseum), it was both reasonable and foreseeable (if not entirely intended) that Plaintiffs would rely on the advice of loan professionals and bank representatives (many of whom held the title "Loan CONSULTANT") trained to understand the highly-complicated terms and mathematics of the mortgage world, in deciding to contract with Defendants. The same is true of

appraisals. It is reasonable and foreseeable that a consumer would rely upon an appraisal arrived at by a professional appraiser – particularly in light of their complicated nature. Plaintiffs did in fact rely on the representations and concealments of these parties.

205. In reliance on the above concealments and/or material misrepresentations, Plaintiffs entered into mortgage contracts with Defendants they otherwise would not have entered into and as a result thereof were damaged. This damage was not only foreseeable by Defendants, but actually foreseen (and then concealed) by them.

206. The unraveling of Defendants' scheme has caused the material depression of real estate values throughout California, including the real estate of Plaintiffs herein.

207. Defendants expected that the deteriorating quality of the loans that Bank Defendants were writing, and the poor performance over time of those loans, would ultimately curtail Bank Defendants ability to sell those loans in the secondary mortgage market and/or to purchase credit default swaps as hedges.

208. Defendants knew that within a foreseeable period, its investors would discover that Defendants' borrowers could not afford their loans and the result would be foreclosures and economic devastation.

209. Despite their awareness of and concerns about the increasing risk the Defendants were undertaking, they hid these risks from the Plaintiffs, borrowers, potential borrowers, and investors.

210. The unraveling of the Defendants' scheme has materially depressed the price of real estate throughout California, including the real estate owned by the Plaintiffs, resulting in losses to the Plaintiffs.

211. As a proximate result of the foregoing concealments and/or misrepresentations made by Defendants, California property values have precipitously declined and continue to decline, gravely damaging Plaintiffs by materially reducing the value of their primary residences, depriving them of access to equity lines, second mortgages and other financings previously available based upon ownership of a primary residence in California, in numerous instances leading to payments in excess of the value

of their properties, thereby resulting in payments with no consideration and often subjecting them to reduced credit scores (increasing credit card and other borrowing costs) and reduced credit availability.

212. Furthermore Plaintiffs were damaged in having their home values artificially inflated by Defendants.

213. The hyper-inflated property values resulting from Defendants' inflated appraisals and market-fixing scheme directly caused Plaintiffs to pay a substantially higher price for their home than they would have otherwise, and then their home was truly worth at the time. The additional amounts Plaintiffs were forced to pay above and beyond the true uninflated value of their property at the time of purchase, constitutes damage to Plaintiffs directly caused by Defendant's scheme. The damage didn't end there however - the unraveling of Defendants' scheme sent the market into a downward spiral, causing Plaintiffs' home value to plummet *much below the true value* of the property at the time of purchase. These two losses in sum constitute Plaintiffs' loss of equity, and can be determined by subtracting the current depressed value of Plaintiffs' property from the artificially inflated price they were forced to purchase it for. Even for those Plaintiffs who did not purchase their property, but rather refinanced it, the demise of Defendants' scheme drove the value of their property far below its original purchase price, once again resulting in the loss of substantial equity;

214. Without limiting the damages as described elsewhere in this Complaint, Plaintiffs damages arising from this Cause of Action also include loss of equity in their houses, costs and expenses related to protecting themselves, reduced credit scores, unavailability of credit, increased costs of credit, reduced availability of goods and services tied to credit ratings, increased costs of those services, as well as fees and costs, including, without limitation, attorneys' fees and costs.

215. To this day, the Defendants profess willingness to modify Plaintiffs' loans in accordance with law, but nonetheless they persist to this day in their secret plan to deprive Plaintiffs of their rights.

216. As a result of the foregoing, Plaintiffs' damages herein are exacerbated by a continuing decline in residential property values and further erosion of their credit records.

217. Defendants' concealments and misrepresentations, both as to the their scheme to profiteer from the mortgage melt-down and as to their purported efforts to resolve loan modifications with Plaintiffs, are substantial factors in causing the harm to Plaintiffs described in this Complaint.

218. Defendants acted outrageously and persistently with actual malice in performing the acts alleged herein and continue to do so. Accordingly, Plaintiffs are entitled to exemplary and punitive damages in a sum according to proof and to such other relief as is set forth below in the section captioned Prayer for Relief which is by this reference incorporated herein

219. These frauds and concealments were unknown to all Plaintiffs referenced herein at the time of loan origination. All Plaintiffs herein discovered these frauds and concealments beginning no more than 3 years prior to the date of filing this action. A reasonable person would have been unable to reasonably discover said frauds any earlier.

SECOND CAUSE OF ACTION

(By All Plaintiffs – Intentional Misrepresentation – Against All Defendants)

220. The preceding paragraphs and subsequent causes of action are hereby incorporated by reference as though fully set forth herein.

221. **IN ADDITION TO THE ALLEGATIONS MADE THROUGHOUT THIS COMPLAINT, WHICH APPLY TO ALL PLAINTIFFS (EXCEPT WHERE OTHERWISE NOTED), APPENDIX "A" ("INDIVIDUALIZED PLAINTIFF ALLEGATIONS") PROVIDES INDIVIDUALIZED ALLEGATIONS AS TO EACH AND EVERY PLAINTIFF IN THIS ACTION AND THE SPECIFIC WRONGS DONE BY EACH DEFENDANT.** By this reference, Plaintiffs hereby incorporate Appendix "A" to this Complaint.

222. In addition to the aforementioned partial misrepresentations and half-truths, Defendants, hand in hand with one another, **intentionally and affirmatively misrepresented** the following through Defendants' securities filings, speeches, advertisements, public utterances, websites, brokers, loan consultants, branches, and communications with clients and other media:

a. That Plaintiffs would be able to *afford* the loans they were being given;
b. That Defendants' calculations confirmed that Plaintiffs will be able to afford the loans they were being given;
c. That Defendants calculations confirmed that Plaintiffs would be able to shoulder the additional debt resulting from Defendant's loans, in light of Plaintiffs' other debts and expenses;
d. That the term "qualify" was synonymous with being able to "afford" a loan.
e. That by paying the minimum payment on the Option ARM loan they would not be deferring interest (aka "negatively amortizing"), when in reality, they would be deferring interest;
f. That by paying the minimum payment on the Option ARM loan, Plaintiffs would be paying principal and interest, when in reality the minimum payment did not pay down any principal, and actually resulted in deferred interest (aka negative amortization);
g. That the value arrived at by Defendants' appraisals of Plaintiffs' property was indeed the true value of Plaintiffs' property (when in reality Defendants appraisals' were intentionally and artificially inflated, and moreover when Defendants had engaged in a systematic price fixing scheme which had already falsely inflated the value of Plaintiffs' property);
h. That the value arrived at by Defendants' appraisals of Plaintiffs' property was sufficient to justify the size of the loan they were being given (when

internally Defendants were inflating appraisal values and knew that the values being used did not justify the size of the loans being placed on the property, and moreover that Defendants knew such valuations would inevitably result in the home going "upside" down followed by inevitable default);

i. The true terms of the their loans, including their interest rate, the terms of their loans, whether the loan was variable or fixed, the duration of any fixed period, and the inclusion of a prepayment penalty;

j. That Defendants only entered into mortgages with qualified borrowers (when in reality Defendants were recklessly and intentionally ignoring their own underwriting standards, and offering mortgages to substantially under-qualified borrowers, including Plaintiffs herein who they knew could not afford their loans);

k. That Defendants were financially sound (when in reality Defendants were dependent on selling their fraudulently-pooled loans to investors and the secondary market to sustain their business);

l. That Defendants held their loans in their own portfolio and did not sell them on the secondary market (when in reality Defendants sold the overwhelming majority of their loans on the secondary market);

m. That Defendants were engaged in lending of the highest caliber. (when in reality Defendants (1)were disregarding industry standard quality assurance and underwriting guidelines as well as their own underwriting guidelines, (2)had ceded their underwriting guidelines to the bottom of the market by virtue policy to match loans of any other lender no matter how unsafe, and (3) were lending to under qualified borrowers upon properties which were intentionally overvaluated – all in the name of making as much money on the secondary/investor market as quickly as possible);

n. That the loans they offered were safe and secure (when internally Defendants and their officers were referring to their loans as "SACKS OF SHIT");

o. That Plaintiffs and other borrowers were qualified for the loans Defendants were placing them into and that Plaintiffs were capable of affording the fully amortized payments on those loans (when internally Defendants knew that Plaintiffs were not qualified, that Plaintiffs could not afford the loan, and that, in many instances, it was a mathematical inevitability that the Plaintiffs would default);

p. That Plaintiffs would be able to refinance their loans at a later date (when internally Defendants knew that Plaintiffs would not be able to refinance Plaintiffs as a result of the depressed real estate market created by Defendants, the overvaluation of Plaintiffs' property, the damage to Plaintiffs' credit score which defendants knew would ensue, and for the many reasons already set forth above);

q. Defendants would modify Plaintiffs' loans (when in fact Defendants did not modify Plaintiffs' loans, had no intentions to do so, and it was more profitable for Defendants to leave the loans unmodified).

r. Finally, HLCS, as the wholly-owned subsidiary of Ally, intentionally misrepresented the appraised values of Plaintiffs' subject properties, at the direction and behest of the conspiracy of Defendants, in order to (1) manipulate and fix real estate values throughout California (as described in Paragraph 64-83 of this Complaint, entitled "The Fraudulent Appraisal Process") and (2) falsely assure Plaintiff's that the properties they were purchasing were indeed worth what they were paying for it, thereby inducing Plaintiffs' reliance to enter into a loan contract with Bank Defendants

Authority to Bind

223. These representations were not made as statements of opinion, but as statements of fact, made by the employees and agents of Defendants charged with the duty of originating loans ("**Loan Representatives**") and who were specifically employed by Defendants to walk Plaintiff borrowers through the loan process, and vested with the authority, both apparent and actual, to bind Defendants.

224. These Loan Representatives were charged with the duties of educating borrowers about the loan process, the various type of loans from which they could choose, the payments that would result for each given type of loan, the pros and cons of each loan, how each loan would amortize, providing truth in lending disclosures, offering interest rate quotes, cost quotes, point quote, and APR quotes, and running all the various payment calculations and debt to income calculations. These Loan Representatives were also charged with properly taking each borrower's loan application, as well as the loan application fee and/or ensuring the accuracy of each loan application filled out, and collecting and analyzing documentation relating to each borrower's income, job stability, assets, creditworthiness, outgoing debt, as well as collateral as well as giving the necessary Truth in Lending disclosures required under law.

225. These Loan Representatives were charged with the duty of quarterbacking the entire loan process from start to finish, including initiating escrow, acquiring title reports and initiating title insurance, obtaining the loan application from the borrower (or in Defendants' case falsifying the loan application on behalf of the borrower), collecting any and all fees due (such as appraisal fees and application fees) collecting necessary documents (such as paystubs, tax statements, w2's, schedules of real estate owned, etc etc), regularly interfacing between Defendants' underwriting department and each borrower to make sure the loan gets approved, coordinating the appraisal and appraisal dates, rendering estimated HUD or HUD-1 disclosures, through loan document printing, loan signing side by side with a notary, to loan funding, and post-funding issues.

226. It was through these Loan Representatives, *and only through these Loan Representatives*, that borrowers (Plaintiffs herein) came to understand exactly what the bank wanted from them, and whether the bank was going to give them a loan, and on what grounds the loan was going to be granted. Each and every one of these Loan Representatives was vested by the respective bank they work for – the bank/lending institution from which a Plaintiff got his/her loan – with both actual and apparent authority to bind that bank/lending institution. These Loan Representatives were the ***sole*** interface between the bank/lending institution and the customer/borrower/plaintiff. Defendant banks very much intended to create the distinct perception that the representations made by these Loan Representatives, were factual representations coming directly from the bank, and representations upon which the borrower Plaintiffs could reasonably rely, well above-and-beyond that of mere opinion.

227. Specifically, with regard to subparagraph "(f)", above, the representation made by Defendants to Plaintiff borrowers, that they could "afford" the loans they were being given were statements delivered as statements of fact upon which Plaintiffs could reasonably rely, particularly in light of the specialized expertise of the Defendant employees who made the statements. These employees spend months and years, undergoing specialized education, to learn the highly complicated mathematics of lending such as loan amortization, loan re-casting, front end debt to income ratios, back end debt to income ratios, and loan to value ratios – mathematics which borrowers simply don't understand, nor could they be expected to. Because of their vastly superior knowledge, and because of the actual and apparent authority vested in these employees by the Defendant Banks, as described above, Plaintiffs herein reasonably relied on these statements. By making these false and misleading statements, they incurred a duty to be truthful.

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<u>The Difference Between Being "Qualified" for a Loan and Being able to "Afford" a Loan</u>

228. The difference between the term "qualified" and "afford" is a palpable one in this case.

229. Even despite this difference, it is important to understand that a bank's qualification process is by its very nature designed to measure a borrower's ability to *afford* a loan.

230. In determining whether a borrower is "qualified" for a loan, banks, including Defendant Banks, use two principal metrics known as **"front-end"** debt to income ratio, and "**back end"** debt to income ratio – both of which are intended to measure a borrower's ability to afford their loan.

231. A **"front end"** debt to income ratio compares ONLY the loan payment (as well as taxes and insurance) to a person's income, and does not take into account any other debt whatsoever. For example a person who makes $10,000 per month, and whose mortgage costs $3,000 per month (including tax and interest), has a "front end" debt to income ratio of 30%.

232. A **"back end"** debt to income ratio, by contrast, takes into account not only a person's loan payment (as well as taxes and insurance) but also *all other* debt reflected on their credit report. If that same person used in the example above, also had an additional $4,000 in monthly expenses such as credit card debt, car loans/payments, other mortgages, student debt, etc. etc., then that person's "back end" ratio would be 70%. ($3,000 per month for her loan, taxes & insurance plus, $4,000 per month for other debts = $7,000 per month in debt. $7,000 of debt divided by $10,000 in monthly income equals, 70% "back end" debt to income ratio).

233. Industry Standard and Conventional Underwriting guidelines, including those used by Defendants herein, required that loans with a "front end" debt to income ratio higher than **35%** be rejected. They also required that loans with a "back end" debt to income ratio of higher than **45%** be rejected – and that 45% figure was on the on the

very high end. For a loan with a 45% "back end" debt to income ratio to be approved, a borrower had to have excellent credentials in all other areas such as 720+ median credit score and high liquid asset reserves totaling more than 12 months of their). In other words, Defendant Banks would not approve borrowers whose loan payment was more than 35% of their total monthly income, or whose total outgoing monthly debt as reflected on their credit report (including the loan payments) was more than 45% of their total monthly income.

234. Intuitively, these two figures seem low. The typical lay borrowers ask "why are these figures so low? Clearly, I'm able to afford a larger loan if I still have **55%** (100% - 45% back end ratio) of my income available to me, after I've paid all my other debts, to pay for that larger loan." **And therein lies the fundamental problem.** Borrowers, because of their lack of knowledge, simply don't understand that, in fact, they **cannot** afford more. They often overestimate themselves. By contrast, Banks have made a science of understanding exactly how much a borrower can afford, dedicating millions of dollars, hiring teams of expert statisticians, and spending years formulating underwriting guidelines, predicated on 100's of years of prior underwriting acumen, all to craft underwriting guidelines which reflect what appears to be a deceptively simple question – how much debt can a borrower realistically shoulder without imperiling themselves or their ability to pay back their loan? It is through their detailed efforts that Banks have settled upon the 35% front-end and 45% back-end debt-to-income ratios as a realistic measure of what borrowers can afford.

235. The answer to the above question ("why are these figures so low?") is that banks, unlike borrowers, have recognized through their detailed research, that borrowers simply cannot *afford* a loan unless they are left with at least 55% of their income (after having paid their mortgage payment as well as all the other debt reflected on their credit report) to account for life's myriad non-credit reported expenditures such as emergency expenditures, unexpected events, non-credit reported debts, as well as one-time (non-recurring) expenses, including: **health care, medical emergencies, educational**

expenses/tuition, food, water, electricity, catastrophic & natural disasters, emergency home repairs, medication, doctor's bills, medical insurance, car payments, fuel, auto insurance, phone bills, internet, medication– these items are even more expensive if a borrower has children. And this is before even turning to the discussion of a borrower's need set money aside for their savings and/or retirement.

236. In other words the term *afford* as used herein describes a borrower's ability to shoulder the additional debt burden resulting from the subject loan, in light of the **numerous** other real-life demands placed on that borrower's income such as their…

237. **Credit-reported debts** (i.e. credit card debt, car loans/payments, other mortgages or financing, installment debt student debt, etc. etc);

238. **Non-Credit Reported Expenses/Debt** (i.e. health care, medical emergencies, educational expenses/tuition, food, water, electricity, catastrophic & natural disasters, emergency home repairs, medication, doctor's bills, medical insurance, car payments, fuel, auto insurance, phone bills, internet, medication)

239. Real world need to set aside some of their income into a savings account, such that they are not living month to month.

240. Thus, the back-end debt to income ratio is a measure of a borrower's ability to afford their loan which takes into account that borrowers have great demands placed on their money outside of their credit reported debts – demands which borrowers typically fail to account for or demands which, because of their lack of expertise, borrowers are not as cognizant of, as banks are.

241. Moreover, a Bank's qualification/underwriting process is also meant to temper borrowers who overestimate themselves or their ability to pay back/afford their loan.

242. Because Defendant Banks have seen the pitfalls associated with the loans of *hundreds of thousands* of borrowers, unlike borrowers who only know the pitfalls of their own solitary loan, and because banks enjoy the benefit of 100's of years of underwriting acumen, unlike borrowers who enjoy no such benefit, banks are substantially better

positioned to understand the myriad expected and unexpected demands placed on a borrower's income which would jeopardize a borrower's ability to afford the additional debt burden resulting from a loan. Thus, banks, unlike borrowers, are intimately familiar with how much a borrower is truly capable of affording. The sum result of their detailed studies, established underwriting principles, and statistical analysis is that a borrower would be imperiled and likely to default on his loan if their loan payment exceeds more than 35% of their total income (front end), and that a borrower's loan payments in combination with their credit-reported debts cannot exceed more than 45% of their income (back end). And for that reason, they have made back end and front end debt to income ratios - which are intended to measure a borrower's ability to *afford* a loan - a cornerstone element of their qualification process.

243. In sum, then, by its own nature Defendants' qualification process is intended to measure whether a borrower can truly *afford* the loan they're being given.

244. Yet even despite the fact that the qualification process is implicitly predicated on the notion that a borrower can afford the loan, Defendants went one step further, and **affirmatively and explicitly** (mis)represented to Plaintiffs that they would be able to *afford* the loans that they were being given. In part, if not in whole, Defendants did this in order to assuage Plaintiffs of rightful concerns regarding their ability to shoulder the additional debt burden caused by taking on the loan – and Defendants did so in an attempt to induce Plaintiffs into accepting financing so that the Loan Representatives could make their commission, and so that Defendant Banks could make their money by selling the loan on the secondary market for profit.

245. Specifically, Plaintiff Borrowers in this action were explicitly told by Defendants and their employee Loan Representatives that they could *afford* the loans they were being given, and that they need not worry about whether they would be able to shoulder the additional debt burden. Defendants told Plaintiffs that their calculations show that the Plaintiffs will be able to afford their loans and comfortably shoulder the additional debt from the loan, when taking into account all of Plaintiffs' other monthly

debt. These statements were not offered as statements of opinion, but rather as outright statements of fact.

246. More specifically, the Plaintiff-borrowers in this action were told by Defendants and their employee Loan Representatives that they would be able to comfortably afford the fully amortized payments under the loan, or in some instances they were told that they would be able to comfortably afford the payments on the loan, but Defendants failed to additionally disclose that the initial payments were not the permanent payments on the loan, or that those payments would drastically increase in the future, and that the Plaintiffs would not be able to afford such drastically increased payments.

247. In fact in many instances, Plaintiffs were additionally told by Defendants that a determination that they were qualified indeed meant, and was synonymous with, that Plaintiffs could in fact *afford* their loans.

248. As Plaintiffs' counsel continues to survey Plaintiffs and collect information regarding their reliance upon Defendants' misrepresentations, Plaintiffs will seek leave to amend to allege such supplemental allegations.

249. For all of the reasons already listed, all of the above-listed material misrepresentations were, in fact, false. Defendants were not financially sound; Defendants did not hold their loans in their own portfolio but rather sold them on the secondary market; Defendants were not engaged in lending of the highest caliber, but quite the contrary; the loans offered by Defendants were anything but safe and secure; Defendants did not refinance Plaintiffs loans at a later date ; Defendants did not modify Plaintiffs' loans; Plaintiffs and other borrowers were not qualified for the loans Defendants were placing them into; Plaintiffs were not capable of affording the fully amortized payments on those loans as represented by Defendants; Plaintiffs and other borrowers' homes were falsely valued at inflated sums in order to place Plaintiffs into larger loans; Defendants did not utilize a quality underwriting process; and Defendants regularly entered into mortgages with grossly under-qualified borrowers.

250. The campaign of misinformation described throughout this complaint and in the First Cause of Action was intended to be repeated and broadly disseminated through the media, analyst reports and individual communications, and it was. It was intended to become part of the well-understood "givens" among homeowners and prospective homeowners seeking mortgages, and it was. The campaign of disinformation and the manifestation of that campaign described in the preceding paragraphs of this Second Cause of Action succeeded. Plaintiffs relied upon the misrepresentations and entered into mortgages with Defendants.

251. The misrepresentations were made with the intention that Plaintiffs rely thereon. It was important to Defendants that Plaintiffs rely on its misrepresentations so that Plaintiffs would come to a false understanding as to the nature of their business. The foregoing misrepresentations were specifically intended to convince Plaintiffs to enter into mortgages with Bank Defendants.

252. In reliance on the above concealments and/or material misrepresentations, Plaintiffs entered into loan contracts with Defendants they otherwise would not have entered into and as a result thereof were damaged. This damage was not only foreseeable by Defendants, but actually foreseen (and then concealed) by them.

Plaintiffs' Reasonable Reliance

253. Plaintiffs reasonably and foreseeably relied upon the deception of Defendants in deciding to enter into a mortgage contract with Ally and Bank Defendants – Ally and Bank Defendants were among the nation's leading providers of mortgages. It was highly regarded and by dint of its campaign of deception through securities filings, press releases, public utterances, web sites, advertisements, brokers, loan consultants and branch offices, Bank Defendants had acquired a reputation for performance and quality underwriting. Furthermore, Ally, through its advertisements had cultivated a reputation of trustworthiness and that Ally worked in the interests of their client borrowers, and not just in its own interests. (See Ally's ads - "We make money with you, not off you" -

http://www.businessinsider.com/ally-bank-print-ad). Again for these reasons, Plaintiff-borrowers' reliance was reasonable.

254. By reason of Ally's prominence and long term campaign of deception as to its business plans and the relationship of trust developed between each of the Defendants and Plaintiffs, Plaintiffs were justified in relying upon Defendants' representations.

255. Moreover, as consumers unfamiliar with the myriad intricacies, terms and mathematics of mortgages, it was both reasonable and foreseeable (if not entirely intended) that Plaintiffs would rely on the advice of loan professionals and bank representatives (many of whom held the title "Loan CONSULTANT") trained to understand the highly-complicated terms and mathematics of financing, amortization, indices, margins, and collateralization in the mortgage world, in deciding to contract with Defendants.

256. Further, the fundamental advisory role that a lender takes in a lender-borrower relationship is also grounds for a borrower's reasonable reliance on their statements and advice. The reality is that borrowers simply don't understand the highly complicated mathematics of lending such as amortization, loan re-casting, loan to value ratios, or debt to income ratios, etc. Nor could they be expected to – those mathematics require specialized training and education. The borrower's knowledge is inferior. Teams of highly trained underwriters spend weeks determining whether a borrower can handle their loan. How can it be expected that a single lay-borrower can do the same? It is *frequently* the case that a borrower walks into a lender's office and asks the loan consultant "how much can I afford?" Because of the vast imbalance of knowledge, when a loan consultant tells a borrower that they can afford their loan, borrowers <u>*believe*</u> that – they rely on their lender's knowledge. Though banks might not like to acknowledge it, that *is* the reality – and facts establishing this reality can be readily established at trial through testimony and otherwise. For these very same reasons, a lenders duty to be truthful is implicated as well.

257. The same is true of appraisals. It is reasonable and foreseeable that a consumer would rely upon an appraisal arrived at by a professional licensed appraiser – particularly in light of their *complicated* and highly fact sensitive & contextual nature - particularly where, as here, the appraisers were held out as being employed and/or contracted by Ally and Bank Defendants; Borrowers believed that Bank Defendants, by virtue of its reputation would only work with scrupulous, professional, and ethical appraisers. Additionally, the appraisers delivered their valuations and appraisals as statements of fact, not as statements of opinion. Moreover Bank Defendants ratified the statements and values offered by their appraisers by communicating to Plaintiffs that the values arrived at by their appraisers were in fact the true values of their properties/homes. Plaintiffs did in fact rely on the representations and concealments of these parties.

258. Plaintiffs did in fact rely on the representations and concealments of these parties.

259. As a result of Defendants' scheme described herein, Plaintiffs could not afford their mortgage when its variable rate features and/or balloon payments kicked in or its introductory rate expired. In fact, because of Defendants' deception, many Plaintiffs were placed into loans they could not even afford from outset of the loan. Further, as a result of the Defendants' scheme, Plaintiffs could not refinance or sell their residence without suffering a massive loss of their equity investments.

260. As a result of the foregoing, Plaintiffs have lost all or a substantial portion of the equity invested in their houses and suffered reduced credit ratings and increased borrowing costs, among other damages described herein.

261. Bank Defendants represented to multiple Plaintiffs that they would be assisted by Defendants in a loan modification. As described herein, that representation was false. Defendants knew that representation was false when they made it.

262. Because of new laws pertaining to loan modifications and Defendants' insistence that they had a genuine interest in complying therewith and in keeping borrowers in their homes, Plaintiffs reasonably relied on the representations.

263. By delaying Plaintiffs from pursuing their rights and by increasing Plaintiffs' costs and the continuing erosion of each Plaintiff's credit rating, each Plaintiff's reliance harmed that Plaintiff. .

264. As a proximate result of the foregoing concealments and/or misrepresentations made by Defendants, California property values have precipitously declined and continue to decline, gravely damaging Plaintiffs by materially reducing the value of their primary residences, depriving them of access to equity lines, second mortgages and other financings previously available based upon ownership of a primary residence in California, in numerous instances leading to payments in excess of the value of their properties, thereby resulting in payments with no consideration and often subjecting them to reduced credit scores (increasing credit card and other borrowing costs) and reduced credit availability.

265. Furthermore Plaintiffs were damaged in having their homes values artificially inflated by Defendants. Specifically, since down payments are calculated as a percentage of the home value, by over valuating the loans, Defendants were also required to place larger down payments. Defendants knew Plaintiffs would lose their down payments as a result of the fact that Defendants were intentionally placing borrowers into loans for which they were unqualified, (2) the loan products they were being placed into were unsustainable (3) the financial meltdown Defendants knew their actions would cause, (4) for the sake of brevity, for all reasons already mentioned herein.

266. Without limiting the damages as described elsewhere in this Complaint, Plaintiffs damages arising from the matters complained of in this Cause of Action also include loss of equity in their houses, costs and expenses related to protecting themselves, reduced credit scores, unavailability of credit, increased costs of credit, reduced availability of goods and services tied to credit ratings, increased costs of those services, as well as fees and costs, including, without limitation, attorneys' fees and costs.

267. Plaintiffs' reliance on the representations made by Defendants was a substantial factor in causing Plaintiffs' harm.

268. Furthermore, Plaintiffs' reliance on the misrepresentations of the HCLS all directed and ratified by the Ally and Bank Defendants, was a substantial factor in causing Plaintiffs' harm.

269. Plaintiffs are entitled to such relief as is set forth in this Cause of Action and such further relief as is set forth below in the section captioned Prayer for Relief which is by this reference incorporated herein.

270. These frauds and concealments were unknown to all Plaintiffs referenced herein at the time of loan origination. All Plaintiffs herein discovered these frauds and concealments beginning no more than 3 years prior to the date of filing this action. A reasonable would have been unable to reasonably discover said frauds any earlier.

271. Specifically, Defendants repeatedly emphasized Defendants' underwriting quality in public statements from 2003 through 2008. With an incentive to bundle and sell large quantities of loans as quickly as possible, banks all over the country, including Defendants, became conduits for the securitization and sale of loans to Wall Street. The banking industry began to move away from the traditional model of "originate to hold" towards a new system of banks as loan-conveyor belts under the "originate to sell" model which eviscerated the incentives of a traditional lender to ensure quality loan production, instead replacing those incentives with an incentive to churn out as many loans as possible regardless of loan quality. Notably, the ease with which securitized mortgage products could be sold encouraged poor underwriting and guidelines which had been established to mitigate and control risk were often ignored.

<u>THIRD CAUSE OF ACTION</u>

(*By All Plaintiffs – Negligent Misrepresentation – Against All Defendants*)

272. All preceding and subsequent paragraphs are hereby incorporated by reference as though fully set forth herein.

273. **IN ADDITION TO THE ALLEGATIONS MADE THROUGHOUT THIS COMPLAINT, WHICH APPLY TO ALL PLAINTIFFS (EXCEPT WHERE**

OTHERWISE NOTED), APPENDIX "A" ("INDIVIDUALIZED PLAINTIFF ALLEGATIONS") PROVIDES INDIVIDUALIZED ALLEGATIONS AS TO EACH AND EVERY PLAINTIFF IN THIS ACTION AND THE SPECIFIC WRONGS DONE BY EACH DEFENDANT. By this reference, Plaintiffs hereby incorporate Appendix "A" to this Complaint.

274. Although Defendants may have reasonably believed that some or all of the representations they made, as described in this Complaint, were true, none of them had reasonable grounds for believing such representations to be true at the time: (1) the representations were instructed to be made, as to those Defendants instructing others to make representations, or (2) at the time the representations were made, as to those Defendants making representations and those Defendants instructing others to make the representations, or (3) at the time the representations were otherwise ratified by the Defendants.

275. Such representations, fully set forth in the Second Causes of Action and previous sections of this Complaint, were not true.

276. Defendants intended that Plaintiffs rely upon those misrepresentations.

277. As described herein, Plaintiffs reasonably relied on those representations.

278. By reason of the prominence of Defendants and the campaign of deception as to its business plans and the relationship of trust developed between Defendants and Plaintiffs, Plaintiffs were justified in relying upon Defendants' representations.

279. As a result of relying upon the foregoing misrepresentations, each Plaintiff entered into a mortgage contract with Defendants.

280. As a result of scheme described herein, Plaintiffs could not afford his or her mortgage when its variable rate features and/or balloon payments kicked in. Further, as a result of the Defendants' continuing scheme, Plaintiffs could not refinance or sell his or her residence without suffering a loss of Plaintiff's equity.

281. Without limiting the damages as described elsewhere in this Complaint, Plaintiffs damages as a result of the foregoing also include loss of equity in their houses,

costs and expenses related to protecting themselves, reduced credit scores, unavailability of credit, increased costs of credit, reduced availability of goods and services tied to credit ratings, increased costs of those services, as well as fees and costs, including, without limitation, attorneys' fees and costs.

282. Plaintiffs are entitled to such relief as is set forth in this Cause of Action and such further relief as is set forth below in the section captioned Prayer for Relief which is by this reference incorporated herein.

FOURTH CAUSE OF ACTION

(By All Plaintiffs – Unfair Competition – Against All Defendants)

283. The preceding paragraphs and subsequent causes of action are incorporated by reference as though fully set forth herein.

284. **IN ADDITION TO THE ALLEGATIONS MADE THROUGHOUT THIS COMPLAINT, WHICH APPLY TO ALL PLAINTIFFS (EXCEPT WHERE OTHERWISE NOTED), APPENDIX "A" ("INDIVIDUALIZED PLAINTIFF ALLEGATIONS") PROVIDES INDIVIDUALIZED ALLEGATIONS AS TO EACH AND EVERY PLAINTIFF IN THIS ACTION AND THE SPECIFIC WRONGS DONE BY EACH DEFENDANT.** By this reference, Plaintiffs hereby incorporate Appendix "A" to this Complaint.

285. As it pertains to Unfair Competition Law "the universal test is whether the public is likely to be deceived." (Grant v. California Bench Co. (1946) 76 Cal.App.2d 706, 707-708.)

286. As described in this Complaint, and here in this Cause of Action, Defendants have acted unlawfully, unfairly, and fraudulently. To say the least, their actions were likely to deceive the public.

287. As detailed in the First and Second Causes of Action above (and hereby incorporated by reference), Defendants' fraud upon Plaintiffs was pervasive and multi-

pronged. Defendants' material misrepresentations and affirmative concealments, if left unchecked, are highly likely to deceive the public.

288. Defendants' actions in implementing and perpetrating their fraudulent scheme of inducing Plaintiffs to accept mortgages for which they were not qualified based on inflated property valuations and undisclosed disregard of their own underwriting standards and the sale of overpriced collateralized mortgage pools, all the while knowing that the plan would crash and burn, taking the Plaintiffs down and costing them the equity in their homes and other damages, violates numerous federal and state statutes and common law protections enacted for consumer protection, privacy, trade disclosure, and fair trade and commerce. In addition to being fraudulent and violates numerous federal and state statutes and common law protections enacted for consumer protection, privacy, trade disclosure, and fair trade and commerce.

289. These actions were immoral, unethical, oppressive, unscrupulous and substantially injurious to similarly situated borrowers, and Plaintiffs herein. Defendants' conduct had no utility other than for their own ill-gotten gain, and the harm was great not only to Plaintiffs herein, but also to residents of California, broadly, who have seen a decrease in their home and property values as a result of the bursting of the super-heated pricing bubble created by Defendants' fraudulently inflated appraisal; at the time of their fraud, Defendants *knew* that their conduct would cause the precipitous decline in property values throughout the State of California. Defendant's acts caused substantial consumer injury with no benefits to consumer competition. Plaintiffs could not have reasonably avoided these injuries occasioned by Defendants' intentional deceit, misrepresentation, and omission. Further, Defendants acts significantly threatened harm to competition.

290. The Defendants perpetrated their fraudulent scheme of selling off overpriced loans by making willful and inaccurate credit disclosures regarding Defendants' borrowers, including Plaintiffs, to third parties. This false credit disclosure was critical to the success of Defendants' continued sales of the massive pools of mortgage loans necessary to perpetuate the scheme. The Defendants were aware that if the true credit

profiles of the borrowers and the values of their real estate were accurately disclosed, the massive fraudulent scheme would end. As a result, the Defendants repeated, reinforced and embellished their false disclosures.

291. Defendants had an unfair and fraudulent pattern on inducing and directing borrowers to fall behind on their payments with the promise that by doing so, they would become eligible for a loan modification. Relying on these representations, Plaintiffs fell behind on their loan payments, but were never offered a loan modification. In doing so, Plaintiffs' credit was substantially damaged, they suffered greatly diminished access to credit and financing, and were penalized with fees, penalties and charges in addition to becoming delinquent on their loan as recommended by the Bank. By recommending that Plaintiffs fall behind, Defendants effectively trapped Plaintiffs into keeping their loan with Defendants, because no other institution would help Plaintiffs after they became delinquent on their mortgage, or after their credit was destroyed.

292. Defendants also had an unfair and fraudulent pattern of offering borrowers what appeared to be Loan modification offers (called "Trial Payment Plans"), but in reality these offers were nothing more than "cash grabs." Defendants never intended to permanently modify Plaintiffs' loans. Specifically, Defendants would offer Plaintiffs and homeowners who were already on the brink of default/foreclosure a lower payment called a "trial payment." Defendants promised that if Plaintiffs were able to make the trial payment for 3 (or more) months, Defendants would permanently modify Plaintiffs' payment to be the same amount under the trial payments. But Defendants had a pattern of rejecting these loan modifications despite Plaintiffs' compliance with every term of the loan modification offer. Instead Defendants would use the offer as bait to induce Plaintiffs to make payments which would never be applied to the principal and interest of their loan, but instead would be applied to the mountain of unmerited late charges, and fees, taking what little money the financially imperiled plaintiffs had left, and duping them into spending it on unfairly placed fees and late charges. Defendants never had any intent of modifying their loans, despite Plaintiffs' full compliance with the terms of the

offer. Such acts are patently unfair and fraudulent, and Plaintiffs are entitled to remuneration of all payments made under such trial payment plans, as well as an injunction prohibiting Defendants from this deceptive business practice. More specifically, Defendants' unlawful and unfair practices in this regard include, but are not limited to, the following:

a. failing to make good faith efforts to provide them with a loan modification and breaching their contractual obligations, written and implied promises, loan servicing functions owed to Plaintiffs, who fulfilled their obligations by making timely modified payments;
b. making false and/or misleading representations that Plaintiffs were eligible and entered into the trial modification period, which would lead to a permanent modification of their mortgage payment;
c. failing to disclose to Plaintiffs that their modified payments may be reported to credit bureaus as default or late payments that would destroy their credit scores;
d. delaying processing, demanding duplicate documentation, and failing to provide adequate information or communication regarding the loan modification programs to Plaintiffs; and
e. engaging in conduct that undermines or violates the spirit or intent of the consumer protection laws alleged in this Complaint
f. omitting to inform Plaintiffs that they could be rejected from the trial modification period at any point, and that this would result in the immediate demand for a balloon payment consisting of purported delinquency payments and substantial late fees, default fees, foreclosure fees, inspection fees, property preservation fees, trustee fees, trustee sale guarantee fees, mail fees, recording fees, and default servicing fees.

293. Regulation Z obligates creditors providing "closed-end credit" (such as a mortgage) to "make the disclosures required by this subpart clearly and conspicuously in

writing, in a form that the consumer may keep." (12 C.F.R. § 226.17(a)(1) (2010).) "This standard requires that disclosures be in a reasonably understandable form. For example, while the regulation requires no mathematical progression or format, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other." (12 C.F.R. § 226, Supp. 1, par. 17(a)(1).)

294. Variable rate mortgage borrowers must be provided with "[a] loan program disclosure" that includes "[a]ny rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate carryover." (12 C.F.R. § 226.19(b)(2)(vii) (2010).) "If the initial interest rate will be a discount or a premium rate, creditors must alert the consumer to this fact." (12 C.F.R. § 226, Supp. 1 par. 19(b)(2)(v)(1).) "A creditor must disclose, where applicable, the possibility of negative amortization. For example, the disclosure might state, 'If any of your payments is not sufficient to cover the interest due, the difference will be added to your loan amount.' . . . If a consumer is given the option to cap monthly payments that may result in negative amortization, the creditor must fully disclose the rules relating to the option, including the effects of exercising the option (such as negative amortization will occur and the principal loan balance will increase). . . ." (12 C.F.R. § 226, Supp. 1 par. 19(b)(2)(vii)(2).)

295. The Defendants knew the borrowers' credit was inadequate to support continued loan payments, absent unsustainable inflation of property values. These pervasive false credit disclosures to third parties (including purchasers of bundled mortgage pool created by the Defendants) constituted false credit reports in violation of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.,* and these pervasive false disclosures permitted the Defendants to continue their scheme and victimize the Plaintiffs.

296. These pervasive false disclosures also caused the bubble to burst. Once it became known that some of the information provided by Defendants was false, the

market for the sale of bundled loans dried up. The Defendants began to issue foreclosure notices, property values began dropping, and then, under the weight of *deflation* in a market that requires *inflation*, the equity investments made by Plaintiffs and others in their homes was lost . . . and then Plaintiffs were lost in the greatest economic recession since the 1930s.

297. As alleged by the SEC, this fraud also violated Federal law, including, without limitation, the antifraud provisions and insider provisions of the Securities Act of 1933 ("*Securities Act*") and the Securities Exchange Act of 1935 ("*Exchange Act*") including, without limitation:

a. Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), by engaging conduct which acted as a fraud on the purchaser of securities based on collateralized mortgage pools;
b. Section 10(b) of the Securities Act and Rule 10b-5 thereunder, 15 U.S.C. § 78j(b) and 17 C.F.R. 240.10b-5, by making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading and/or otherwise engaging in acts, practices, or courses of business which operated as a fraud or deceit upon purchasers of securities based on collateralized mortgage pools; and
c. Section 13(a) of the Securities Exchange Act and Rules 12b-20, 13a-1 and 13a-3 thereunder, 15 U.S.C. § 78t (e), by filing with the SEC false information for the fiscal years 2005 through 2007.

298. The foregoing violations were in furtherance of the fraud perpetrated on Plaintiffs. In fact, Defendants could not have told the truth in their public filings without that truth becoming known to Plaintiffs. Conversely, the false filings gave additional credence and support to omissions, concealment, promises and inducements.

299. Defendants violated the Patriot Act as described above by failing to adequately identify the source of funds used to fund mortgages and fund the securitization pools that purchased mortgages.

300. Defendants further violated by Patriot Act by failing to adopt procedures required thereunder as to the sources of funds and record-keeping pertaining thereto.

301. Defendants further violated the Patriot Act by failing to timely and accurately provide the disclosures required under the Patriot Act pertaining to its sources of funds, thereby depriving Plaintiffs and others of information pertaining possibly money laundering.

302. Defendants herein both in their individual capacity, and in their capacity as co-conspirators with one another and with HLCS (Ally's wholly-owned appraisal management company) have violated Cal. Civ. Code §1090.5 by improperly influencing appraisers through, among other things, compensation, coercion, extortion, bribery, intimidation of their appraisers, as well as the appraisal management company itself, and its management and executives, as described at length in the sixth cause of action below.

303. Defendants violated California common law by pursuing foreclosures through mere nominees, such as MERS, and without proof they owned the notes and deeds of trust underlying their foreclosure actions.

304. While processing the home loans of each Plaintiff herein, the Ally Defendants and other Defendants herein came into possession, custody and control of their Private Information.

305. The guarantee of privacy granted to each Californian is a special personal and property right. Other states may accord privacy rights by way of statute, or otherwise, but the privacy right in California is a unique, fundamental, Constitutional, and ***inalienable*** right that is also a protectable property interest. The privacy right granted by the California Constitution necessarily includes protection from the release of the Private Information.

306. By foreclosing on Plaintiffs without being "holders" or in possession of their respective Notes, Defendants unlawfully foreclosed on Plaintiffs without having the authority to enforce the debt in violation of UCC 3-301.

307. The Ally Defendants acknowledge and admit that their agents and/or employees disclosed the Private Information of Plaintiffs to outside persons.

308. This Private Information of Plaintiffs was sold or otherwise disclosed to third parties without Plaintiffs' consent, further violating Article I, § 1 of the California Constitution and the California Financial Information Privacy Act.

309. The Private Information was disclosed and then used unlawfully and fraudulently to apply for and receive multiple credit cards, charge accounts, and other credit from businesses in the mistaken belief that they were dealing with a Plaintiff, and not with an identity thief.

310. These undeniable disclosures by the Defendants of nonpublic personal information of the Plaintiffs and others also violated the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 *et seq*.

311. By violating Plaintiffs' right to privacy and by misappropriating nonpublic personal information for their own use, the Defendants thus wrongfully took each Plaintiff's property interest in his or her Private Information and privacy, injuring each Plaintiff, and, as a result, Plaintiffs are eligible for restitution because the Defendants wrongfully acquired the property in which Plaintiffs had an ownership or vested interest.

312. The forgoing fraudulent concealment, material misstatements, and the intentional violations of state and federal statutes cited herein constitute unlawful, unfair and fraudulent business acts or practices and so constitute unfair business practices within the meaning of the California Unfair Practices Act, Cal. Bus. & Prof. Code §§ 17200, 17500. Sections 17200 *et seq.* of the California Business & Professions Code provides, in the disjunctive, for liability in the event of any such "unlawful, unfair or fraudulent business act or practice."

313. The violations described herein are unlawful, in that they violate *inter alia* Article I, § 1 of the California Constitution, the California Financial Information Privacy Act, Cal. Civil Code §§ 1798.80-84, the Fair Credit Reporting Act, the Gramm-Leach-Bliley Act and the Federal laws described herein. These violations are the basis for liability under § 17200 of the Business and Professions Code, as is the unlawful and fraudulent activity described herein.

314. The unfair, unlawful and fraudulent acts and practices of Defendants named herein present a continuing threat to Plaintiff and to members of the public in that these acts and practices are ongoing and are harmful and disruptive to business and financial markets.

315. The actions described herein are unfair and patently fraudulent in that they were conducted for the sole purpose of perpetuating an unlawful and unsustainable investment scheme.

316. As a result of the actions, concealment and deceit described herein, each of the Plaintiffs has suffered material financial injury in fact, including as described elsewhere in this Complaint, loss of equity in their houses, costs and expenses related to protecting themselves, reduced credit scores, unavailability of credit, increased costs of credit, reduced availability of goods and services tied to credit ratings, increased costs of those services, as well as fees and costs, including, without limitation, attorneys' fees and costs.

317. As a further result of the actions, concealment and deceit described herein, each of the Plaintiffs has lost money or property as a result of such unfair competition, including the loss of Plaintiffs' property interest in their Private Information as a result of the unconscionable invasion of privacy and misappropriation of nonpublic personal information.

318. California Civil Code § 2923.5 requires that each mortgagee, trustee, beneficiary, or authorized agent may not file a notice of default pursuant to California Civil Code § 2924 until 30 days after initial contact is made as required therein, or 30

days after satisfying the due diligence requirements to contact the mortgage described therein. Defendants violated the foregoing law by causing a notice of default to be filed against Plaintiffs without the mandatory notice. Defendants did not diligently endeavor to contact the Plaintiffs as required by § 2923.5(g) and Defendants thereby also violated California Civil Code §§ 2923.5 and 2924.

319. As a result of the foregoing unlawful conduct, Plaintiffs suffered further injury in fact by the filing of notices of default and as such the Plaintiffs suffered monetary and property loss. Such injuries and loss included diminished credit scores with a concomitant increase in borrowing costs and diminished access to credit, fees and costs, including, without limitation, attorneys' fees and costs with respect to wrongful notices of default and loss of some or all of the benefits appurtenant to the ownership and possession of real property.

320. The foregoing unlawful activities were pervasive and violate Business and Professions Code § 17200 *et seq.*

321. As a result of Defendants' unfair competition, Plaintiffs are entitled to restitution for all sums received by Defendants with respect to Defendants' unlawful and/or unfair and/or fraudulent conduct, including, without limitation, interest payments made by Plaintiffs, fees paid to Defendants, including, without limitation, the excessive fees paid at Defendants' direction as alleged by the FTC, and premiums received upon selling the mortgages at an inflated value.

322. Further as a result of Defendant's (1) artificial and fraudulent inflation of Plaintiffs' property values, and property values throughout the State of California, as well as (2) Defendants' abandonment of their own as well as industry standard underwriting guidelines, coupled with (3) Defendants incentive to package and sell as many dollars' worth of loans as they could to the secondary market, Defendants placed Plaintiff-borrowers into loans which were considerably larger than were justified by (a) the *true* uninflated valued of their properties, (b) Plaintiffs true uninflated incomes and (c)by Defendants own underwriting guidelines. As a result of Plaintiffs were placed into larger

loans than they could afford or should have been placed into. The additional fees, points and interests paid as a result of the higher/inflated loan amounts constitute damages, and legally cognizable sources of restitution.

323. Further, Defendants either directly or through their subsidiaries, including ETS (and any other such companies), often charged fees associated with initiating or conducting the foreclosures resulting from their fraudulent lending including inspection fees, default fees, late fees, advance fees, attorney fees, and trustee fees. In short, Defendants made money by wrongfully initiating foreclosures against Plaintiffs herein. The award of damages or restitution for these unmerited fees obtained through deceit is proper.

324. Plaintiffs are also entitled to the issuance of a temporary restraining order, a preliminary injunction, and a permanent injunction restraining and enjoining Defendants from any further concealment with respect to the sale of notes and mortgages, any further violation of § 2923.5, any further violation of Article I, § 1 of the California Constitution, the California Financial Information Privacy Act, Cal. Civil Code § 1798.82, the Fair Credit Reporting Act, and the Gramm-Leach-Bliley Act, and any further disclosure or use of the Private Information, other than as intended by the Plaintiffs.

325. Plaintiffs are entitled to such relief as is set forth in this Cause of Action and such further relief as is set forth below in the section captioned Prayer for Relief which is by this reference incorporated herein.

FIFTH CAUSE OF ACTION

(By Plaintiffs listed Below– Wrongful Foreclosure,
Violation of Cal. Civil Code § 2924 –Against All Defendants)

326. The preceding paragraphs and the paragraphs following this cause of action are incorporated by reference as though fully set forth herein.

327. **IN ADDITION TO THE ALLEGATIONS MADE THROUGHOUT THIS COMPLAINT, WHICH APPLY TO ALL PLAINTIFFS (EXCEPT WHERE**

OTHERWISE NOTED), APPENDIX "A" ("INDIVIDUALIZED PLAINTIFF ALLEGATIONS") PROVIDES INDIVIDUALIZED ALLEGATIONS AS TO EACH AND EVERY PLAINTIFF IN THIS ACTION AND THE SPECIFIC WRONGS DONE BY EACH DEFENDANT. By this reference, Plaintiffs hereby incorporate Appendix "A" to this Complaint.

328. Defendants have already foreclosed upon the following property owned by the following Plaintiffs – allegations establishing the specific factual basis of the wrongful nature of the foreclosure as against each of the Plaintiffs below are set forth in **APPENDIX A.**

a) Rick Albritton (Appendix A, ¶7)
2030 W Windhaven Dr,
Rialto CA 92377

b) Deborah Albritton (Appendix A, ¶7)
2030 W Windhaven Dr,
Rialto CA 92377

c) David Cruz (Appendix A, ¶11)
48159 Sol De Linda,
Coachella, CA 92236

d) Yesenia Cruz (Appendix A, ¶11)
48159 Sol De Linda,
Coachella, CA 92236

e) Cristina Palbicke (Appendix A, ¶13)
27949 Harwood Dr,
Santa Clarita, CA 91350

f) Magdalena Avila (Appendix A, ¶25)
1015 Via Carmelita
Burbank, CA 91501

g) Cecilia Chaube (Appendix A, ¶24)
2617 Ranchwood Dr.

Brentwood, CA 94513

h) Florastene Holden (Appendix A, ¶29)
2114 Oak Crest Dr.
Riverside, CA 92506

i) Ignacio Rodriguez (Appendix A, ¶31)
2714 Norton Ave.
Lynwood, CA 90262

j) Rosa Rodriguez (Appendix A, ¶31)
2714 Norton Ave.
Lynwood, CA 90262

k) Sarah Sebagh (Appendix A, ¶6)
1233 N. Flores St., Apt. 302
West Hollywood, CA 90069

l) Gricelda Ruano (Appendix A, ¶26)
170 East Street, Unit D9
Chula Vista, CA 91910

m) Elisa Jordan
170 East Street, Unit D9 (Appendix A, ¶26)
Chula Vista, CA 91910

329. Because Defendants are not the holders of the notes and deeds of trust and are not operating under a valid power from the current holders of the notes and deeds of trust, Defendants did not have the right to proceed with the foregoing foreclosures.

330. The burden of proving an assignment falls upon the party asserting rights thereunder. In an action by an assignee to enforce an assigned right the evidence must not only be sufficient to establish the fact of assignment when that fact is in issue, but the measure of sufficiency requires that the evidence of assignment be clear and positive to protect an obligor from any further claim by the primary obligee. Defendants, they failed

to do so and improperly foreclosed by reason of lack of proof that they had the right to proceed.

331. Under the California Uniform Commercial Code, a negotiable instrument, such as a promissory note secured by a mortgage, may only be enforced by the holder or a person with the rights of a holder. Com. Code § 3-301. For instruments payable to an identified person, such as a lender, a holder is generally recognized as the payee or one to whom the negotiable instrument has been negotiated. This requires transfer of possession and endorsement by the prior holder. Com. Code § 3-201. Unless the parties otherwise provide, the mortgage follows the note. Civ. Code § 2936.

332. Though in California, the assignment of a note generally carries with it an assignment of the mortgage (Civ. Code § 2936), it is still required in California that the <u>holder</u> of the note or a person operating with authority from that holder be the foreclosing party and that the mortgage not have been assigned away from that note.

333. Defendants no longer own the notes it originated and there is just no way of knowing who now owns the Plaintiffs' mortgages because the Defendants do not know who owns these mortgages. Indeed, the Defendants do not know where it is that they obtained their alleged rights to collect money from Plaintiffs thereunder.

334. Once separated from the note, the trust deed is unenforceable and of no legal value. For negotiable instruments payable to an identified person, such as a lender, a holder is generally recognized as the payee or one to whom the negotiable instrument has been negotiated. This requires transfer of possession and endorsement by the prior holder. (Com. Code § 3-201). Unless the parties otherwise provide, the mortgage follows the note. (Civ. Code § 2936; see also *Carpenter v. Longan* (1872) 83 U.S. 271, 275).

335. Civil Code § 2936 provides: "the assignment of a debt secured by mortgage carries with it the security." Defendants have no evidence that they own the notes or have any power to enforce them from the rightful owners.

336. Foreclosure was wrongful for each of the following reasons, independent of any of the other following reasons: (1) because Plaintiff's mortgage was obtained through concealment and/or misrepresentation; (2) because Defendants do not own the note and do not have a power of attorney with respect to the note; (3) because the note and deed of trust have become separated; (4) because Defendants do not own the deed of trust and do not have a power of attorney with respect to the deed of trust; (5) because Defendants cannot surmount their burden of demonstrating they own the note or have a power of attorney with respect thereto; and (6) because Defendants cannot surmount their burden of demonstrating they own the deed of trust or have a power of attorney with respect thereto.

337. As a result of the foreclosures, Plaintiff was dispossessed of Plaintiff's property and put to the expense of relocating and securing alternative properties. Plaintiff was further dispossessed of the value of Plaintiff's home and the potential appreciation thereof.

338. Defendants, including Trustee, acted outrageously and persistently with actual malice in performing the acts alleged in this cause of action. Accordingly, Plaintiff is entitled to exemplary and punitive damages in a sum according to proof and to such other relief as is set forth below in the section captioned Prayer for Relief which is by this reference incorporated herein.

SIXTH CAUSE OF ACTION

(By All Plaintiffs – Improper Influence Over Appraisers – Cal. Civ. Code §1090.5 – Against Bank Defendants and HCLS)

339. The preceding paragraphs and the paragraphs following this cause of action are incorporated by reference as though fully set forth herein.

340. **IN ADDITION TO THE ALLEGATIONS MADE THROUGHOUT THIS COMPLAINT, WHICH APPLY TO ALL PLAINTIFFS (EXCEPT WHERE OTHERWISE NOTED), APPENDIX "A" ("INDIVIDUALIZED PLAINTIFF**

ALLEGATIONS") PROVIDES INDIVIDUALIZED ALLEGATIONS AS TO EACH AND EVERY PLAINTIFF IN THIS ACTION AND THE SPECIFIC WRONGS DONE BY EACH DEFENDANT. By this reference, Plaintiffs hereby incorporate Appendix "A" to this Complaint.

341. California Civil Code §1090.5 "Valuation of real estate; improper influence; violation" forbids the exercise of influence over the valuation of property by any person with an interest in that real estate transaction. Specifically California Civil Code §1090.5 states:

> (a) No person with an interest in a real estate transaction involving a valuation shall improperly influence or attempt to improperly influence the *development*, *reporting*, result, or review of that valuation, through coercion, extortion, bribery, intimidation, compensation, or instruction. For purposes of this section, a valuation is defined as an estimate of the value of real property in written or electronic form, other than one produced solely by an automated valuation model or system. Prohibited acts include, but are not limited to, the following:
>
> (1) Seeking to influence a person who prepares a valuation to report a minimum or maximum value for the property being valued. Such influence may include, but is not limited to:
>
> (A) Requesting that a person provide a preliminary estimate or opinion of value prior to entering into a contract with that person for valuation services.
>
> (B) Conditioning whether to hire a person based on an expectation of the value conclusion likely to be returned by that person.
>
> (C) Conditioning the amount of a person's compensation on the value conclusion returned by that person.
>
> (D) Providing to a person an anticipated, estimated, encouraged, or desired valuation prior to their completion of a valuation.
>
> (2) Withholding or threatening to withhold timely payment to a person or entity that prepares a valuation, or provides valuation management

functions, because that person or entity does not return a value at or above a certain amount.

(3) Implying to a person who prepares a valuation that current or future retention of that person depends on the amount at which the person estimates the value of real property.

(4) Excluding a person who prepares a valuation from consideration for future engagement because the person reports a value that does not meet or exceed a predetermined threshold.

(5) Conditioning the compensation paid to a person who prepares a valuation on consummation of the real estate transaction for which the valuation is prepared.

(6) Requesting the payment of compensation to achieve higher priority in the assignment of valuation business.

342. Bank Defendants and their Co-conspirators herein had a direct interest in the valuation of real estate transactions at issue, as they were the institution that was lending on the property, and moreover because they stood to profit from the consummation of the real estate transaction – which depended in large part on a sufficient valuation being returned by the appraiser. Their wrongful influence occurred in connection with the "development, reporting, result, or review of that valuation" in accord with the language of the statute.

343. Defendants herein both in their individual capacity, and in their capacity as co-conspirators with one another and with HCLS (Ally's wholly-owned appraisal management company) have violated California Civil Code §1090.5 by violating appraiser independence through, among other things, compensation, coercion, extortion, bribery, intimidation of their appraisers, as well as the appraisal management company itself, and its management and executives, as well as other independent, outside, or "fee appraisers" not employed by HCLS Appraisals.

344. As described throughout this Complaint at length, but particularly at paragraphs 64-89, Ally and Defendants herein as well as their employees, officers, and agents intentionally:

a. Caused the appraisers to base the value of their appraisals on a factor other than the independent judgment of the appraiser;

b. Mischaracterized and/or suborned the mischaracterization of the appraised value of the property securing the extension of credit;

c. Sought to influence the appraiser to facilitating the making of and pricing of their transactions;

d. Sought to influence the appraiser to achieve a targeted value;

e. Withheld or threatened to withhold payment for the appraisal services rendered in conformity with the contract between the parties;

f. Implied, directly or indirectly or threatened that the future retention of the appraiser was contingent upon their return of a satisfactory valuation;

g. Excluded other appraisers from rendering future valuations based on the return of valuations which did not meet a certain target in the past.

345. Defendants acted with malice and with the intent of artificially inflating California Real estate properties generally, as well as the values of Plaintiffs' individual properties and homes.

346. As alleged at length above, Bank Defendants violated California Civil Code §1090.4 by subjecting, both, their appraisers as well as their appraisal management company, HCLS to coercion, undue influence, bribery, instruction, appraiser selection manipulation, financial pressure, as well as threats – both explicit and implicit – that if their appraisals didn't come back in at value (1) future business with HCLS would either diminish or discontinue altogether or (2) that the individual appraiser would be blacklisted. Specifically, these allegations are found above at paragraphs 64-89, and are hereby incorporated into this cause of action by reference.

347. Defendants acted with malice and with the intent of artificially inflating California Real estate properties generally, as well as the values of Plaintiffs' individual properties and homes.

348. As a result of Defendants' acts, California's real estate economy, and the individual values of Plaintiffs' properties were artificially inflated, resulting in and causing the substantial loss of Plaintiffs' net equity upon the unraveling of their fraudulent scheme.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants and each of them as follows:

1. General, Actual, Compensatory, Special and Exemplary damages according to proof under the First, Second, Third, Fourth, Fifth, and Sixth Causes of Action, and any other causes of action for which such relief may be available;

2. Twice the amount of finance charges under the Second Cause of action;

3. Statutory relief according to proof under the Fourth and Fifth Causes of Action and any other causes of action for which such relief may be available;

4. Restitution under the Fourth Cause of Action and any other causes of action for which such relief may be available;

5. Temporary, preliminary, and permanent injunctive relief under the Fourth and Fifth Causes of Action and any other causes of action for which such relief may be available;

6. On all causes of action, for costs of suit herein;

7. On all causes of action, for pre- and post-judgment interest;

8. On all causes of action for which attorney's fees may be awarded pursuant to the governing contract, by statute or otherwise, reasonable attorneys' fees; and

9. On all causes of action, for such other and further relied as this Court may deem just and proper.

Dated: October 31, 2012

Respectfully submitted,
BROOKSTONE LAW, PC

By: ____________________
Vito Torchia, Jr.
Attorneys for Plaintiffs

EXHIBIT 5

Claim #3517 Date Filed: 11/9/2012

B 10 Modified (Official Form 10) (12/11)

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK | **PROOF OF CLAIM**

Name of Debtor and Case Number: Homecomings Financial, LLC, Case No. 12-12042

NOTE: *This form should not be used to make a claim for an administrative expense* ***(other than a claim asserted under 11 U.S.C. § 503(b)(9))*** *arising after the commencement of the case. A "request" for payment of an administrative expense* ***(other than a claim asserted under 11 U.S.C. § 503(b)(9))*** *may be filed pursuant to 11 U.S.C § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):
Carolyn Hairston

Name and address where notices should be sent:

Vito Torchia, Jr.
Brookstone Law, P.C.
4000 MacArthur Blvd. Suite 1110
Newport Beach, CA 92660

Telephone number: 800-946-8655 email: bankruptcy@brookstonelaw.com

Name and address where payment should be sent (if different from above):

Telephone number: email:

☐ Check this box if this claim amends a previously filed claim.

Court Claim Number:______
(If known)

Filed on:______

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

1. **Amount of Claim as of Date Case Filed:** $ 1,300,000
If all or part of the claim is secured, complete item 4.
If all or part of the claim is entitled to priority, complete item 5.
☐ Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. **Basis for Claim:** Contingent Fraud Claim in litigation
(See instruction #2)

3. Last four digits of any number by which creditor identifies debtor:	3a. Debtor may have scheduled account as:	3b. Uniform Claim Identifier (optional):
_ _ _ _	(See instruction #3a)	(See instruction #3b)

4. **Secured Claim** (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: ☐Real Estate ☐Motor Vehicle ☐Other
Describe:
Value of Property: $______ **Annual Interest Rate**______% ☐Fixed ☐Variable
(when case was filed)
Amount of arrearage and other charges, as of the time case was filed, included in secured claim,
if any: $______ **Basis for perfection:** ______

Amount of Secured Claim: $______ **Amount Unsecured: $**______

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).
☐ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. §507 (a)(4).
☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).
☐ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).
☐ Taxes or penalties owed to governmental units – 11U.S.C. §507 (a)(8).
☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$______

* *Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Claim Pursuant to 11 U.S.C. § 503(b)(9):
Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before May 14, 2012, the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.
$______ (See instruction #6)

7. **Credits.** The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #7)

8. **Documents:** Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. *(See instruction #8, and the definition of "****redacted****".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

9. **Signature:** (See instruction #9) Check the appropriate box.
☐ I am the creditor. ■ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.) ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.
Print Name: Richard Sturdevant
Title: Attorney
Company: Brookstone Law, P.C.
(Signature) (Date) 11-8-12
Address and telephone number (if different from notice address above):

Telephone number: Email:

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Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18

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SUMMARY OF BASIS FOR CREDITOR'S CLAIM

Creditor is a Plaintiff in active litigation against Debtors. Because the complaint is voluminous at 111 pages long, Creditor is submitting this summary of the basis for the Creditor's claim per the instructions of the Notice of Deadlines for Filing Proofs of Claim. Plaintiff filed the initial complaint on May 9, 2012, in United States District Court, Central district of California—Western Division, Case No.: 12-5016-JAK (AGRx). The First Amended Complaint ("FAC") was filed on October 31, 2012. As of the date of this proof of claim, Defendants/Debtors GMAC Mortgage, LLC, GMAC-RFC Holding Residential Funding Company, LLC, Home Connects Lending Services, LLC, Homecomings Financial, LLC, Executive Trustee Services, LLC, Residential Funding Company, LLC, Residential Capital, LLC, Residential Funding Real Estate Holdings, LLC, and Residential Mortgage Real Estate Holdings, LLC (collectively referred to as "Defendants") have not responded to Plaintiff's FAC.

Plaintiff alleges the following causes of actions: (1) fraudulent concealment pursuant to California Civil Code (Civil Code) sections 1572, 1709 and 1710; (2) intentional misrepresentations pursuant to Civil Code sections 1572, 1709, and 1710; (3) negligent misrepresentations pursuant to Civil Code sections 1572, 1709, and 1710; (4) unfair competition pursuant to California Business and Professions Code section 17200; (5) wrongful foreclosure pursuant to Civil Code section 2924; and (6) improper influence over appraiser pursuant to Civil Code section 1090.5.

Plaintiff claims the Defendants set out upon a massive and centrally-directed fraud by which Defendants (1) placed Plaintiff into loans which Defendants *knew* Plaintiff could not afford and would default upon to a mathematical certainty, (2) abandoned industry-standard underwriting guidelines, (3) concealed/ misrepresented the terms of their loans to Plaintiff to induce unwitting consent, and (4) intentionally inflated the appraisal values of homes throughout California in a market-fixing scheme –*knowing that their scheme would cause the precipitous decline in values of all homes throughout California*, including those of Plaintiff's. Plaintiff seeks monetary damages of approximately $1.3 million dollars.